



*The
Life
of
Shari'a*

*A Comparative
Anthropology
of Law*

YOUSSEF
BELAL

The Life of Shari‘a

The Life of Shari‘a

A Comparative Anthropology of Law

Youssef Belal



UNIVERSITY OF CALIFORNIA PRESS

University of California Press
Oakland, California

© 2024 by Youssef Belal

Library of Congress Cataloging-in-Publication Data

Names: Belal, Youssef, author.
Title: The life of Shari'a : a comparative anthropology of law / Youssef Belal.
Description: Oakland : University of California Press, [2025] | Includes bibliographical references and index.
Identifiers: LCCN 2024031213 | ISBN 9780520410046 (hardback) | ISBN 9780520410039 (paperback) | ISBN 9780520410060 (ebook)
Subjects: LCSH: Islamic law. | Islamic law—Philosophy. | Law and anthropology. | Canon law. | Conversion. | Comparative law.
Classification: LCC KBP144 .B43 2025 | DDC 340.5/9—dc23/eng/20240719
LC record available at <https://lcn.loc.gov/2024031213>

Manufactured in the United States of America

31 32 31 30 29 28 27 26 25
10 9 8 7 6 5 4 3 2 1

For my mother, Afifa Hilali

CONTENTS

<i>Preface and Acknowledgments</i>	<i>ix</i>
<i>Note on Translation and Transliteration</i>	<i>xiii</i>
Introduction	1
PART ONE. POLITICS	
1. Jurisprudence of the Revolution	25
2. Law, Power, and Shari‘a’s Incompleteness	41
PART TWO. SPIRITUALITY	
3. Spiritual Ethics and the Unseen World	63
4. The Spiritual Topography of the Self in Classical Islam	78
5. Truth of the Law, Truth of the Self, and Dis-embodiment	94
PART THREE. JURISPRUDENCE	
6. Worship, Social Interactions, and Shari‘a’s Displacement	111
7. Islamic Legal Knowledge and the New Real	128
PART FOUR. EPISTEME	
8. <i>Kalām</i> and the Islamic Episteme	147
9. Revealed Speech and the Sources of Jurisprudence	172

PART FIVE. GENEALOGY

10. Canon Law and the Christian Self	195
11. The Law of Conversion	217
12. Inner Self, Collective Self, and the Law of the Universal	238

PART SIX. REASON

13. Modernist Reason and Shari‘a	255
14. Law and the Shaping of the Self in Contemporary Europe	271
15. Islamic Reason	291

Conclusion	313
------------	-----

<i>Notes</i>	317
--------------	-----

<i>Bibliography</i>	343
---------------------	-----

<i>Index</i>	353
--------------	-----

PREFACE AND ACKNOWLEDGMENTS

This book has been in the making in many places that have been also places of belonging, whether Casablanca, Meknes, Marrakech, New York, Berkeley, Los Angeles, Paris, Istanbul, Tehran, Isfahan, Cairo, Kabul, Tunis, Tripoli, Khartoum, or Addis Ababa. While it was initially conceived in multiple academic sites, the bulk of it was written outside the institution of academia. It was composed while working in the resolution of conflicts for another institution, the United Nations, whose very existence and current shape raise the question of what it means to live in a world of wars and deep socio-economic and environmental inequalities, a world whose global institutions are mirroring and, too often, reinforcing inequalities of power rather than addressing them. And yet, this book is sharing, along with my work in peace negotiations, the very idea of mediation. *The Life of Shari'a* can be read as an exercise in (critical) mediation between major epistemic, philosophical, legal, theological, and ethical traditions attached to Islam and the West.

This book is for the most part an exercise in thought with classical Islamic thinkers through the books we inherited from them and through the contemporary scholars who have revisited them. I have interacted with scholars transmitting Islamic knowledge in Cairo's erudite circles as mentioned in several chapters of this book but also, in a more sedimented manner, with scholars in Meknes, Fes, Marrakech, Tehran, Qom, and Istanbul. Conversations, in the shade of Al-Azhar Mosque, with Sheikh Hasan al-Shafi'i, known for his work and teaching on *kalām* and Islamic philosophy, were among the most memorable.

This conversation with Islamic scholars started initially with my previous book *Le cheikh et le calife: Sociologie religieuse de l'Islam politique au Maroc* (The sheikh and the caliph: Religious sociology of political Islam in Morocco) that studied forms

of Islamic politics across contemporary Moroccan history and society and revolved around the relationship between religious and political practices. *The Life of Shari'a* is both a continuation of and a departure from *The Sheikh and the Caliph*.

. . .

Many colleagues and friends have helped bring this book to existence. Gil Anidjar read the first version of the manuscript and grasped the nature of my project with his habitual depth and sophistication. I cannot thank him enough for his inestimable engagement with the manuscript and his comments. His intellectual friendship is a gift. I am also grateful to Judith Butler and Faisal Devji for reading the final version of the manuscript and their generous comments.

The University of California, Berkeley and Columbia University offered forums to discuss my initial thoughts. At UC Berkeley, Judith Butler's seminars on Critical Theory were a captivating intellectual experience. Discussions with Lawrence Cohen, Bill Hanks, Charles Hirschkind, Niklaus Largier, Saba Mahmood, Laura Nader, and Paul Rabinow were opportunities to share initial ideas. Stefania Pandolfo's engagement has been a delight. The Introduction to Social-Cultural Anthropology course that I taught at UC Berkeley was the occasion to expand on the idea of comparative anthropology.

At Columbia University, Brinkley Messick has been a generous interlocutor. The *Shari'a* Workshop was the opportunity to present and discuss a chapter on Islamic jurisprudence that benefited from Brink's and Kevin Reinhart's insightful comments. New York also offered a place for exchanges with Talal Asad, Mahmood Mamdani, Wael Hallaq, Hamid Dabashi, Souleymane Bachir Diagne, and Tim Mitchell. I equally benefited from the creative interactions with my students attending the seminar Religion and the Secular: Theories and Methods that I taught at Columbia.

I thank the team at the University of California Press, in particular Eric Schmidt and Jyoti Avery, for their assistance during the editorial and production process. I also thank Catherine Osborne for her help in the preparation of the manuscript and Philip Grant for his crafting of the index. I am grateful to sculptor Parviz Tanavoli for generously granting the rights to use a picture of his monumental *Heech* for the book cover and to the Grey Art Museum for facilitating this process.

The writing of this book would not have been possible without the patience, care, and love of Mariem El Aobaidi. It mirrors the traces of Mariem's soul and our peregrinations in Casablanca, Rabat, Marrakech, Paris, Barcelona, Prague, Budapest, Lisbon, and Istanbul.

This book belongs to a larger familial history whose central characters are Afifa Hilali, my mother, and Aziz Belal, my father, whose economic thought on global inequalities and dedication to social justice remain an inspiration. Abdelkrim Belal, my brother, has always been supportive over the years. Rym and Flavia are

an enduring source of joy. Whenever I stay in Meknes, the voices of my grandparents Fattouma Khlifi and Ibrahim Hilali always reverberate in the medina's maze, resonate through the arches of *Dār Laḥboul*, and animate its fountain.

It is my mother's love, care, thought, and activism that permeated this book with *life*. *The Life of Shari'a* is dedicated to her.

. . .

Chapter 1 is a substantially revised version of an article that was initially published in *Comparative Studies for South Asia, Africa and the Middle East*. I thank Duke University Press for granting the permission to use part of this material in this book.

NOTE ON TRANSLATION AND TRANSLITERATION

All translations from Arabic and French, unless otherwise noted, are mine. My transliteration of Arabic words follows the *International Journal of Middle Eastern Studies*'s chart. The initial hamza has been dropped. Words existing in English are spelled as they appear in the *Merriam-Webster's Collegiate Dictionary*. Arabic names of prominent political or cultural figures have been spelled without diacritics and following the accepted English spellings.

Introduction

This book is a conceptual inquiry into shari‘a developed through Islamic thought. It is also about the law and its Western genealogy. While writing about contemporary shari‘a relying on classical Islamic thought is an exercise in its own right, it nevertheless calls for questions about how the (state) law as we (its contemporaries) know it, and the thinking underpinning it, came to be constituted. This approach is a way to develop a genealogy of law from the perspective of shari‘a informed by a set of questions (such as the relation between the visible and the invisible, and between inner self and public behavior) essential to the life and world of shari‘a and Islam, and yet that bring the law and its Western trajectory under a new light.

The genealogy of law informs contemporary shari‘a because it is constitutive of Muslims’ experience and lifeworld. However, this book is not about what would have remained of a holistic shari‘a after it had been gripped by the iron cage of modernity. Shari‘a instantiated and lived as fragments is not a contemporary phenomenon. It is true that shari‘a’s knowledges, such as jurisprudence, may, in the first instance, deal with shari‘a as a totality to be grasped intellectually, but the way it related to lives in classical Islam, or how it relates to them in the present, is fragmentary. Shari‘a, in this book, is studied both as an *episteme* and as *concrete fragments* requiring a constant back and forth between the entangled past and present.

Central in this book is the study of shari‘a from the twin perspectives of truth and self: that is, as knowledge and ethics. This means giving due attention to the conditions and rules under which knowledges are produced and deemed acceptable (or refutable) within an epistemic community. It means studying shari‘a as the revelation’s instantiation for selves, lived and inhabited through a multitude of

micro-acts in everyday life (most notably acts of worship) but also at the time of exceptional events.

Like a “firm rope,”¹ shari‘a actualizes the relationship between the revealed and the unrevealed, between the seen and the unseen, between the material and the immaterial.² This is not only true for knowledges such as Sufism that take as their primary object the inner self or theology (*kalām*)³ dealing with God’s attributes. It is also true of jurisprudence (*fiqh*),⁴ the most materialist of all Islamic disciplines, entailing a textual (material, visible) evidential regime, but whose foundational truth (revealed speech) is predicated upon the non-material and the invisible (*ghayb*).⁵ Jurisprudence regulates bodily deeds, and yet enables prayer, the innermost of all acts.

CONCEPTUALIZING FORMS OF LIFE WITH ISLAMIC KNOWLEDGES

Through and besides the study of shari‘a, I am interested in the following question: how can we study contemporary forms of Islamic life with the help of classical Islamic thinkers? Classical Islamic thought, in the widest sense, comprises knowledges (jurisprudence, *kalām*, Sufism, philosophy) that relate the world and the self to the continuous decipherment of the revelation. This means being attentive to non-modern and non-Western forms of knowledge and what they can tell us, with the mediation of contemporary Islamic scholars, about present life in Muslim societies. It means also that, in this book, engaging with classical Islamic thought allows me to conceptualize knowledges and practices attached to shari‘a through the categories of episteme (‘*ilm*), ethics (*akhlāq*),⁶ spirituality (*rabbānī*),⁷ politics (*siyāsa*),⁸ the self (*nafs*)⁹ in its inner (*bāṭin*) and outer life (*ẓāhir*), and the invisible (*ghayb*). Hence, this book is not a work of Islamic intellectual history but rather a book about the Muslim present that starts with shari‘a’s knowledges and practices in present times and places, studied through the lens of classical Islamic thinkers.

The study of shari‘a disciplines that I am developing in this book sheds light on different knowledges dealing with distinct objects, modes of inquiry, and evidence. These include differentiated practices, beliefs, intellection, and imagination: distinct involvements of the self and experiences of and in the world within a shared epistemic regime structured by, and revolving around, the relation between the revealed and the unrevealed, in which the seen and the manifest are signs and manifestations of, and saying something about, the unseen. While each form of knowledge reenacts the truth of the revelation and enables the self to be part of a distinctive relation between the revealed and the unrevealed, it is nevertheless limited by a given knowledge’s epistemic possibilities, demanding overlap with, and the resort to, other forms of knowledge. Jurisprudence (*fiqh*), for example, regu-

lates bodily deeds but assumes a certain set of beliefs (verbalized or not), inner dispositions, forms of collective life, and authority that are the object of distinct knowledges (*kalām*, Sufism, ethics, philosophy).

In classical Islam, intertextuality and overlap did not mean that there was, among scholars of a given knowledge, a generalized recognition of the truthfulness of other knowledges, which could also be partially or totally rejected. Yet the grounds upon which there were partial or total rejections display a shared epistemic regime with a set of identical assumptions about the status of the revelation and its relationship with the unrevealed for individual and collective life, enabling polemics and disagreements to take place within, and between, scholarly communities. Many of most prominent thinkers of classical Islam (such as those whose works I use as archives—Farabi, Juwayni, Mawardi, Ghazali, Ibn Taymiyya, Fakhr al-Din al-Razi, Ibn Sina, Ibn Rushd, Ibn Khaldun) were not only trained in those knowledges but were scholars writing in several disciplines and taking part in interdisciplinary conversations.

This book does not only take the classical Islamic conception of knowledge(s) as an “object,” but is also guided by Islamic thought in the study of shari‘a in contemporary Muslim societies. Ibn Khaldun’s *Muqaddima* offers a conceptual introduction dealing with principles, conditions, and relations determining the life of human civilization (*al-‘umrān al-basharī*) understood as a way for humans not only to act (individually and collectively) for their survival and subsistence, and to cultivate arts, crafts, and knowledges, but fundamentally as a way “to inhabit the world.” It entails forms of life¹⁰ shaped by the relation between the natural, the conventional, and the supernatural, between the material and the non-material, between the visible and the invisible, between thought and practice.

Ibn Khaldun’s new science of civilization dealing with the conditions affecting it (*aḥwāl al-‘umrān*) overlaps with other preexisting knowledges that do not take human societies (*al-ijtimā‘ al-insānī*) as their primary object, but do relate their subject matter to civilizational conditions. For Ibn Khaldun, when philosophy studies cooperation and authority as necessities for human life, or when the sources of jurisprudence (*uṣūl al-fiqh*) search for motives and reasons for revealed legal prescriptions on the basis of higher ends (*maqāṣid*)—showing for example that injustice can ruin a civilization, or murder can harm the survival of the human species—those knowledges actually deal with the preservation of civilization.

While shari‘a is not the *Muqaddima*’s object, it is nevertheless part of human civilization through the knowledges attached to it and through the regulation of politics. Ibn Khaldun’s conceptual anthropology is an invitation to think about shari‘a from within, in relation to a set of knowledges enabled by the revelation and tied to the invisible world (*al-ghayb*), and from outside, in relation to its historicity and actuality. Besides the sections dealing with the status of Islamic jurisprudence in the caliphate, it is in the sixth and last section of the *Muqaddima*

devoted to human thought (*al-fikr al-insānī*) and the classification of sciences (*‘ulūm*) that Ibn Khaldun writes extensively on shari‘a. That is, he writes on its attached knowledges (*shar‘iyyāt*) in contradistinction with the “sciences of wisdom” (*al-‘ulūm al-ḥikamiyya*) relying on reason alone.

The *Muqaddima* is also a way to think about the status of the invisible world (*al-ghayb*), and its relationship to the material and visible world.¹¹ Jurisprudence and its prescriptions are instantiated in the visible, the bodily, and the material. Yet jurisprudence (*fiqh*), and shari‘a knowledges more generally, are enabled by the unseen that is nevertheless manifest through revealed speech captured by (material) textuality. Ibn Khaldun’s phenomenology of the unseen is important because it is foundational for Islamic civilization and its shari‘a knowledges and caliphal politics. It can be touched upon with the study of the means of perception of the invisible (*madārik al-ghayb*) displayed at the time of the prophecy, but also as part of divination and clairvoyance. Humans can also have momentary access to the invisible through prayer and spiritual exercises, dreams and visions.

THE ISLAMIC EPISTEME AND SHARI‘A’S FRAGMENTS

Shari‘a, when related to the actual conditions of its application, is determined by incompleteness rather than an encompassing totality. Prescriptions of Islamic jurisprudence (*fiqh*) or Sufism addressing the self or the community may or may not be implemented. This uncertainty is constitutive of the temporal projection into future deeds and states that shari‘a enables.

What I call the Islamic episteme is an *ethical episteme* and comprehends a distinct relation between knowledge and ethics.¹² Knowledge is not sought only for its own sake, but because it tells the knowledge-seeker and the scholar’s audience what is worth knowing and doing for a good (a right) life lived in accordance with the revelation’s teachings. From this perspective, Islamic forms of knowledge have more in common with the Greek episteme than the modern sciences’ “axiological neutrality.” In both, understanding of the world, mediated by knowledges attached to revelation, tells individuals and communities how to live.

The Islamic episteme is about limits. Humans can only have a limited knowledge of the world, as the material and visible world is not self-sufficient but is dependent on the invisible world of non-materiality and inner selves. Each discipline can only produce a limited knowledge about its own object and requires recourse to other knowledges to go beyond what can be known by, and within, its own language, evidence, and experience. All Islamic knowledges, in different ways, decipher manifest signs of the unseen without ever reaching it.

As I study it in this book, the unseen is not limited to the invisible world (*al-ghayb*) but includes the soul (*al-nafs*), the inner self and the thinking self as thought and spiritual states not only overlap with the unseen world but share with

it the mystery of life as spirit (*rūḥ*). Sufism deals primarily with the inner self and spiritual exercises, but *kalām* and philosophy offer a more extensive knowledge of the different worlds, visible and invisible, including divine attributes and non-human and non-material essences.

While jurisprudence (*fiqh*) deals exclusively with bodily and material deeds, it requires the truth of the unseen in order to be true. However, in the hierarchy of evidence supporting truth claims, *uṣūl al-fiqh*, the discipline dealing with the sources of jurisprudence, relies on the materiality and visibility of the textual, which captures the revelation by which the unseen is manifested. It thus shares with jurisprudence the same commitment to the material and the visible.

I study shari'a both as holistic knowledges and as fragments lived and inhabited by its addressees, informing individual and communal lives and instantiated in given times and spaces. I do not associate fragments only with modern times, as I think that the conditions of reception of shari'a's teachings, addressing selves in given situations but also as a distinct way to live one's life, are fragmentary both in premodern Islam and in contemporary Muslim societies.

Conceptualizing shari'a in its incompleteness and in its fragments is required when giving its due place to the inner self and its relation to external deeds. Because shari'a entails inner states that are known only to God and to the self, and which can be cultivated through spiritual exercises and a certain way of being in the world (as taught notably by Sufism), shari'a's prescriptions, when related to their constitutive ethos, can only have a limited effectiveness. Failure to perform a deed correctly, to reach a certain spiritual state, is part of the journey of the shari'a's self.¹³

Conceptualizing shari'a in its incompleteness and in its fragments is also true when raising, with Ibn Khaldun or Juwayni, the question of the regulation of the polity by Islamic jurisprudence. The *Muqaddima* helps us understand shari'a as both a foundation and a horizon, generating a constant hiatus between its promise and its actuality. While Ibn Khaldun starts his classification of sciences with knowledges associated with the revelation needed for the legally responsible individual (*al-mukallaf*) to know his obligations, and stresses their excellence and sophistication, he is nevertheless recognizing the narrow implementation of shari'a in the regulation of the polity, and the limited role of scholars vis-à-vis coercive power and its holders. From this perspective, shari'a is authoritative and meaningful for Muslims, who can aspire to live according to shari'a's teachings without ever reaching a state of completion.

In *Ghiyāth al-Umam*, Juwayni contemplates instances where shari'a's institutions are progressively withdrawing from the world, raising for each situation the question of what remains of shari'a and what makes shari'a alive and relevant.¹⁴ Starting with the absence of a qualified caliph, and then envisaging the disappearance of the caliphate, Juwayni stresses the centrality of Islamic scholars in the regulation of the polity, regardless of its rulers. What matters for Juwayni is the relationship of

knowledge and guidance between the recognized knowers and those seeking to be guided by shari‘a. This takes place at the level of local communities in the polities where a unified Islamic scholarly authority is nonexistent or contested. In another hypothetical situation, in the absence of scholars, shari‘a still guides the life of Muslims through the transmission of the most essential textual knowledge in a hierarchy of prescriptions structured around, and starting with, the most important rules, that is, the acts of worship. The last possibility pictured by Juwayni is the total amnesia and vanishing of shari‘a knowledge. In this case Muslims would begin again with the *shahāda* (bearing witness),¹⁵ and people would not be accountable for prescriptions they have no means of knowing.

Hence, it is through the relationship between the self and shari‘a, through the question raised by the Muslim in relation to a new event, situation, dilemma (*what should I do?*) that shari‘a is alive. In a polity where there are no scholars (including the transmitters) at all, the question of shari‘a’s relevance actually starts with the self’s request to be guided and her search for an answer, beginning with the principles and rules of religion (*aḥkām al-dīn*). For Juwayni, such a context means dealing with shari‘a holistically, through its foundation (*ussu*) and generative principles (*amr kullīyan fī qawā‘id al-sharī‘a*).¹⁶ This requires the ability to relate the infinite to the finite—that is, the infinite flow of events in the self’s life to shari‘a’s finite sources (*fa-kayfa yashtamilu mā yatanāhā ‘alā mā lā yatanāhā*).¹⁷

A GENEALOGICAL CRITIQUE OF THE CATEGORY OF LAW

Commenting on Kafka’s *Before the Law* and in dialogue with Freud, Derrida elaborates on the concept of law and its constitutive contradictions. The “categorical authority” of the (Kantian) pure law—enunciated, grasped, and enacted without any reference to empiricity—cannot do, actually, without historicity. At the same time, Derrida, in reference to the Freudian *Totem and Taboo*, stresses the impossibility of “a great narrative” that would have provided a historical account of the “origin.”¹⁸ This could only be a fiction, “the history of that which never took place,” produced by a sort of “unconscious fantastic” rather than “pure reason,” and that is nevertheless effective.¹⁹

The “before” and indeed the “beyond” of the law have been central in both the formation of the modern concept of law and its critique. To a great extent, modern state law is accepted as legitimate through the narrative of its constitution.²⁰ This foundational moment, as conceptualized by the philosophers of the contract, and as embodied in the revolutions of the eighteenth century with its declarations and constitutions, is central in how the law is perceived to be structuring modern polities. With its generality, abstraction, and projected universality, state law (with a foundational reference to the collective will), authorizes itself from itself and sus-

tains itself by itself. The critique of the foundational narrative of collective free will has been notably framed in relation to what happened “before the law,” in which the law is interrogated not only in relation to modern law but as a trans-historical and universal category. The Declarations of Rights did not only initiate a new era but also preempted the past.

The aporias of the Freudian account pointed out by Derrida raise important counter-points. Morality is not the result of rational decisions made by a self-transparent will, as the Kantian perspective puts it.²¹ Fulfilling a duty only for its sake is not the result of a rational decision in which the free will of the subject is displayed. It is rather a compulsion that needs to be analyzed and related to its unconscious motives, which are buried in the collective unconscious.

The Freudian critique has been framed as an alternative narrative about the origins of the law, in which the central distinction between law and morality is questioned without being abolished. Kantian abstract morality and the sense of duty located in the inner self without any reference to the law’s materiality and enforcement is necessary and yet not tenable. The law is authoritative not because it is the result of a rational process by which individual wills act together as one collective will, but rather because the initial motive has been internalized and is attached to punishment and fear of death. Hence, “taboos” and moral prohibitions are not only associated to the “internal” life of the subject but are closely related to the ability of an external authority and material force to violently repress longings and desires. The work of internalization out of which taboos and prohibitions are permanently “fixed” and become “innate ideas” is the result of a long intergenerational process.

In the chapters of this book that deal extensively with the European trajectory of the law, I raise the question of the “before of the law” not as the universal event defining the origin of the law discussed by Freud and Derrida, but rather historically in relation to what precedes the formation of the modern category of law and the development of state law. My inquiry into the genealogical shifts attached to the category of law interrogates what the liberal state law says about itself, that is, how it authorizes itself from the foundational collective free will enabling a rational order constituted on the basis of individual rights and freedoms. But this inquiry is informed by a set of questions raised through Islamic forms of knowledge and life as I seek to understand what changing conceptions of legal forms mean for the status and representations of inner selves, including in relation to the colonial other.

SPACE, TERRITORY, AND THE STATE LAW’S SOVEREIGNTY

Since its development from the seventeenth century onward in Europe and its introduction by colonial powers in the nineteenth century, state law has been the vector of a new conception of space, attached to the national territory delimited by

permanent borders in which state sovereignty is exercised exclusively. With its claims to exclusivity, state sovereignty takes the shape of, and translates into, a mono-nomos order excluding, absorbing, and subjecting other normative regimes while redefining the authorship of the law. That is, it self-authorizes the state as the sole and only author of the law through the very performative act of uttering the foundational law through the declaration, the constitution, the code. In Europe, this claim to a monopoly over the formulation and enforcement of the law became a formal characteristic of the state over a clearly delimited territory, bordering and distinguished from other equivalent entities endowed with the same form, qualities, and powers.

The centrality of the territory in giving a representational and material shape to state sovereignty through the principles of territorial integrity and inviolability of borders ratified in Westphalia was notably theorized by Vattel's *Law of Nations*, in which the territory of the nation is associated with the "domain" and assimilated to the "possession of a property" similar, as in Grotius's *De Jure Belli Ac Pacis*, to the individual's property. However, unlike the private domain of citizens which can be limited by state legislation, the domain of the nation is "full and absolute."²² It is this territorial domain that defines the material space of the state's *juris-diction* and "all the places" where the state "exercise justice." This domain requires that the "limits of territories be marked out with clearness and precision," leaving no "uncertainty" or "obscurity,"²³ enabling the replication of the state form and the regulation of relations between nations posited as equivalents.

This intrinsic link between law, sovereignty, and the territorial space²⁴ sheds light on the visual and material dimensions of state law exemplified by the map of the national territory enabling a representation and a perception of "the macrospace" as a "totality"²⁵ and the space where law as sovereignty can be projected. This projection in the representational space, alongside visual and material manifestations of sovereignty, entertains the thesis that state law is omnipotent and coextensive to the national territory, leaving no space for plural and alternative normative regimes such as shari'a.

As contemplated by Hobbes and indicated by the title of his magnum opus (*Leviathan: Or the Matter, Forme and Power of a Commonwealth, Ecclesiasticall and Civil*), the constitution of state power is about matter and form. It signifies a material power whose main finality is to provide order in a given territory through the regulation of bodies (as material entities), their movement and interactions, and to prevent civil war resulting from bodies harming other bodies, for the individual bodies' self-preservation but also for the collective body politic's continued existence.²⁶ As discussed in chapter 11, Hobbes, and more generally political philosophers of the seventeenth century, reflecting the development of state power subjugating ecclesiastical institutions, are interested in survival, not salvation; in the protection of bodies, not in the care of souls. That is the reason why state law,

unlike ecclesiastical law, does not regulate the invisible but only what is visible, and does not deal with “inner” beliefs, but legislates only “outer” deeds.

This materiality and visibility of the state law’s object are made possible by epistemic shifts by which what can be known must be visualized and represented while mirroring the reality (the map) and shaping, in the meantime, this very reality. As famously conceptualized by Heidegger in relation to the distinctive feature of modern science, “The fundamental event of the modern age is the conquest of the world as picture. The word ‘picture’ [*Bild*] now means the structured image [*Gebild*] that is the creature of man’s producing, which represents and sets before. In such producing, man contends for the position in which he can be that particular being who gives the measure and draws up the guidelines for everything that is.”²⁷ Through the act of representation (“to set out before oneself,” “to set forth in relation to oneself”), the human is constituted as “subjectum,” representing reality as an object of knowledge, experiment, and transformation. This epistemic shift informs the constitution of state law as both a form of knowledge and as an experience of, and action in, the world.

STUDYING THE WESTERN TRAJECTORY OF LAW FROM THE PERSPECTIVE OF SHARI‘A

I wrote this book not only to show that shari‘a is relevant in the contemporary life of Muslim subjects and communities, but also to interrogate the modern concept of law through a study of its genealogical shifts in Europe since medieval Christianity.²⁸ Each analytical exercise calls for the other. Writing a non-historicist history of contemporary shari‘a requires a different history of Europe, exploring the relation between European categories and the writing of the history of non-Europe. I am proposing here to develop a critical historical anthropology of the law in Europe through the lens of shari‘a, since key concepts such as the law (and others such as religion, politics, the economy, and more) are too often used without being interrogated.

This book is about shari‘a as much as it is about the historicity and history of the category of law. This allows for a study of shari‘a that will not be determined by normative assumptions about what it is lacking (in comparison to the modern concept of law) to be grasped in translation. The genealogy of the category of law I am exploring is not only conceptual but also entwined with institutional developments and practices that have been circulating outside Europe through the colonization of Muslim societies and affecting the materiality of shari‘a. Hence, because the study of shari‘a requires investigating the concept of law, I have devoted several chapters to the European trajectory of law both internally and in its relation to the colonial other.

In medieval Europe, the production of the law was not a representational activity but rather an emanation of the preexisting supersensible truth. The law, notably

eternal law and natural law, in a way similar to other forms of medieval knowledge, was understood to preexist the constitution of the community and exist independently from humans' thinking and legislating activities. Canon law established by the Church and the law formulated by princely authority were both derived from the unchanging eternal law and natural law. In contrast, modern state law authorizes itself through the very act of its foundation by the political community assembling individual subjects whose knowledge of the world is based on procedural and representational rationality. It is this relation between norms and truth, that is between law and episteme, that allows us to understand the European shift from the Christian hierarchy of laws to the state's mono-legal order in which the law is both a representation of reality and an instrument of its transformation.

The question I am particularly interested in here is the relation between forms of knowledge and forms of life. Christian medieval law, shari'a, and modern state law are all enabling, and enabled by, specific epistemes in which certain forms of life, cultural imaginaries, and moral selves are entwined. Taking into consideration the shifts informing contemporary shari'a and Muslim countries since the encounter with colonialism, but also the changes making possible the formation of the modern concept of law, I want to explore what forms of life are enabled by Islamic knowledges attached to shari'a.

The formal normative regimes that I study in this book all mirror a certain knowledge of the world, the self, and what is beyond the law that makes the law possible. The Christian medieval plurality and hierarchy of laws—notably natural law, canon law, and princely law—were all derived from the eternal law constitutive of the cosmos and the order of the world mediated by the men of Church. Predicated upon the foundational contractualist act forming the state, modern law, in its liberal version, is an act of collective will based on procedural rationality, enabling the cooperation of individual wills in instituting and protecting freedoms and rights. Shari'a rules are intrinsically linked to revealed speech, bringing to sensible reality signs of the unseen world to be deciphered by scholars, notably through the knowledge of texts. While canon law under the Christian polity regulated both bodily deeds and souls, state law deals only with bodies and external behavior. Islamic jurisprudence regulates both acts of worship and social interactions, shaping inner selves with beliefs and dispositions.

The modern concept of law forecloses the possibility of plural legal regimes. Yet the reality of contemporary Muslim life comprises both state law and shari'a as co-existing normative regimes. In order to grasp the modern concept of law in its trajectory both in Europe and in relation to the colonial other, I study its genealogy through the formation of canon law within the Christian medieval hierarchy of laws informing the colonization of America and the conversion of Indian souls to Christianity. I analyze the shift to state law monopolizing the production of

legal rules within the newly constituted nation-state and its territory. I shed light on how this new configuration of law and its regulation of bodily deeds rather than souls, in contrast to colonial America, shaped the colonization of Muslim countries driven by *civilizational* conversion (rather than the older form of conversion to Christianity), affecting the materiality of shari‘a.

CONCEPTUAL CONVERSATIONS

Ever since Edward Said’s *Orientalism*,²⁹ a number of scholars versed in the study of cultures have become increasingly self-aware of the question of representation in the production of knowledge enabled by cultural encounters³⁰ and a conceptual apparatus developed in a network of academic institutions based in the West, and reflecting both the abstractness of modern knowledge and its historicity. *Orientalism* can be read as a more general critique of representational language while leaving open the question of the relationship between representation and truth. But it is also a book whose personal significance is explicitly reclaimed by Said, who experienced the (mis)representation of Arab culture as a personal misrecognition. In that regard, the possibility of truth in the production of knowledge about cultures in a global and deeply unequal academic landscape has to include recognition by the “objects” of knowledge. This means that the objects of knowledge are also subjects of knowledge. It means also that the co-production of knowledge of cultures relying on thinkers of non-Western scholarly traditions in conversation with the Western human sciences should be explored, taking into consideration that those intellectual traditions are attached to distinct and unequal regimes of truth.

I share with Talal Asad the fundamental assumption that the “conceptual geology of [Christian and post-Christian history] has profound implications for the ways in which non-Western traditions are now able to grow and change.”³¹ The conceptual critique of the category of religion initiated by *Genealogies of Religion* questions the uncritical use of concepts that overlooks the discursive conditions of their production, use, and circulation across cultures and in the anthropological study of non-Western cultures. However, while I develop a similar critique regarding the concept of law, my primary object in this book is not “the cultural hegemony of the West,” as Asad put it, but instead the possibility of forms of life enabled by non-Western (Islamic) forms of knowledge in contemporary times. Those transmitted knowledges have been revisited and reformulated by authorized scholars with an understanding of what should remain identical and what is subject to change in relation to new conceptual and material realities. These concepts and their material effects, or one may say these conceptual practices, what they do and negate, cannot be properly understood without interrogating their archaeology and genealogy.

The historicity of concepts, their circulation across cultures and the broader issue of translation, have also informed Dipesh Chakrabarty's *Provincializing Europe*.³² Through the question of the relation between thought and place, Chakrabarty is attentive to the encounter between the conceptual "universals" of political modernity produced in Europe and their scholarly relevance and "localization" in non-Western contexts. Reclaiming both the Marxist analytical tradition and Heidegger's hermeneutics, Chakrabarty explores the possibility of "engaging the universals" as part of a history interrogating the unequal legacies of colonialism without being entrapped in the stagist historicist framework. Indeed, human sciences dealing with non-Western cultures require engagement with a conceptual apparatus that has been historically produced in Western academic institutions, as Chakrabarty points out. However, Chakrabarty's approach is limited by the fact that he does not explore the possibilities offered by non-Western thought in conceptualizing and engaging with Europe, and more broadly, global contemporaneity. In that regard, my approach seeks, first, to conceptualize a non-Western normative regime (shari'a) with the help of classical and contemporary Islamic thinkers as a way to capture contemporary forms of life. I then interrogate the modern category of law and its trajectory through a genealogical study of its conceptual shifts and attached practices. My book revisits the history of European, and more broadly Western, conceptual and institutional practices with a set of questions initiated by the study of Islamic life relying on the resources of Islamic thought. Hence, my book is guided not only by what Islamic knowledges can tell us about Islamic forms of life, but also by what it can tell us about Western concepts and their attached material practices.

THE TIMES AND SPACES OF SHARI'A

The arguments and evidence mobilized to sustain the thesis of shari'a's demise in contemporary times all revolve around the transformations associated with the nation-state and its powers.³³ At the same time, the relationship between shari'a and the conditions of possibility for state powers to be effective in regard to what they claim to achieve has remained unthought. These arguments are part of a narrative focusing on the efficacy and power of state law in relation to its spatial, material, and visual manifestations, contained both in the judicial system and the legislative process, and, metonymically, in the bill and the judgment, the parliament and the court. They assume that the space regulated by the contemporary state is the same space that was previously under the purview of shari'a, as if state law and shari'a had the same objects. They also assume that the state's projection of power into the territorial space is effective, and does what it says it is doing, namely instituting a mono-nomos polity in which *the* law is the exclusive normative regime. To a great extent, these arguments share with the discourse of state

sovereignty its claim of omnipotence; as Austin would say, its ability to be “felicitous”³⁴ not only in relation to the judgment uttered in the courtroom, but in relation to the pre-existing normative and epistemic regimes and distinct forms of life attached to them.

Raising the question of shari‘a’s death (and life) in contemporary times is actually raising the question of possibility of certain forms of life (and forms of thought) following the coercive encounter with European colonialism, and what is usually described as modernity, with its new knowledges, institutions, practices, representations, and beliefs. The difficulty, and actually the creativity, of thinking about a form of life whose episteme is not associated with historicism is to think about it both historically and non-historically, from within and from outside. In relation to shari‘a, and more generally Islam, this means giving due place to the non-historicity and a-temporality of the revelation as a generative event for the present and the future as viewed from an Islamic perspective. It means also to think about shari‘a through its non-material dimension, or more accurately, through the relation between shari‘a’s materiality and non-materiality, and between the visible and the invisible (*ghayb*), the outer (*ẓāhir*), and the inner (*bāṭin*).

The study of shari‘a as a form of life, or put in another way, the forms of life enabled by and attached to shari‘a; to determine whether, in the present of scholarly writing, these forms of life are extinct or still alive, and whether they are distinct from “modern” forms of life; requires the study of the experienced time-spaces associated with contemporary shari‘a as captured in the language of everyday life and at the time of exceptional events, in the formal works of Islamic scholars and ethnographic observations. The paradox of the thesis of shari‘a’s demise is that it is based on a materialist narrative, and misses that shari‘a is meaningful only to the extent that it is linked to the non-materiality of the unseen. The material dimensions (bodies, artifacts, enforcement) attached to shari‘a are certainly important, but they should be studied in conjunction with the non-material dimensions (spirituality, thought, inner self) that are captured by writing, and more generally by language, at the junction of the material and the non-material. Hence, the starting point of the study of contemporary shari‘a in the here and now of academic language is the experience of shari‘a through material and non-material practices in given time-spaces.

Material changes brought about by state law have certainly affected the materiality of shari‘a through attempts to preempt ancient spaces and create new ones. However, the life of shari‘a cannot be reduced to its material forms. Rather, the question that should be raised is the extent to which those material changes have affected the non-material life of shari‘a, its meaningfulness and the very relation between bodily practices and beliefs instantiating, sustaining, and reenacting the truth of the revelation through a normative path shaping deeds and thoughts, outward behavior and inner states, under divine presence. This means giving due

place to the study of the inner space and its attached thoughts and beliefs, as well as their relation to bodily deeds, material interactions with other selves, and the occupation of space.

As an enabler of forms of life, shari'a captures ways of feeling, thinking, interacting, and regulating individual and collective life informed by the relation between the material world and the unseen. Yet it is also a form that has a generative force through which those ways of being are shaped anew as time and space bring about new events and life-situations whose meaning, required action (or inaction), and integration into the "space of experience" and the "horizon of expectation" (to use Koselleck's categories) are mediated by the normative path.³⁵ This is made possible because shari'a, and more broadly the actualization of revelation—in the here and now and for the individual and collective self—is a relation between the signifier and the signified in a given time-space, and more precisely between a fixed signifier and a variable and changing signified. That is, it is between the a-temporality of the revelation's language as manifested in its texts, and the historicity of language by which the reception and meaning of utterances are bound by time and space.

Anthropology is particularly relevant for the study of shari'a as it deals with the "present," shaped by a set of encounters of the anthropologist with events and interlocutors in given places who already belong to the experiential past when the anthropologist starts writing. As an inheritor of Ibn Khaldun, my understanding of the *Anthropos* and my study of civilizations also includes other disciplines, notably philosophy, political theory, history, theology, and, obviously, Islamic studies and law.

Anthropology as relied on in this work builds on ethnographic evidence based on observations of unfolding events and engagement with contemporary Islamic scholars and other interlocutors in distinct places. Hence, introducing the study of shari'a through space, that is, in specific places (in Al-Azhar Mosque, in the Sufi brotherhood's building, in Tahrir Square) as recounted by the anthropologist, necessitates also the study of shari'a through the experience of time and informed by the anthropologist's own experience of time and space.

Introducing space in the comparative anthropology of shari'a and law requires the conceptualization of time, but also of the relation between time-space and experiences attached to and enabled by shari'a. The latter generates its own experiential time in the everyday structured around the five daily prayers and rhythmized by the call for prayer. Fasting the month of Ramadan gives shape to the year. Marriages and pilgrimage to Mecca are lived as events of a lifetime. This time-structure and experience of the everyday connects the lifelong time with the cosmological time of the revelation and the afterlife.

In contemporary times, the time, and more generally, the time-space of shari'a, may be compressed not so much by what has been described as "the empty, homogeneous time" of the nation-state³⁶ as by time patterns external to the shari'a, such

as the bureaucratic time regulating hours of operations, transport schedules, or institutional deadlines.³⁷ The modern experience of time is characterized by acceleration enabled by capitalist expansion and technological transformations, which paradoxically are continuously freeing time and allowing us to do more things in less time while generating the collective and subjective perception that the present is shrinking and contracting. On the one hand, there is a sense that the Muslim, particularly in major urban centers, has less time to perform her duties as regulated by shari'a, but also has no control over her ability to perform them on time due to economic and administrative time patterns. On the other hand, this differentiation accentuates the distinctive quality and value of the time regulated by shari'a regarding the acts of worship (mainly the daily prayers and the fasting of Ramadan) and provides a "deceleration" of time.

The revolutionary event of 2011 studied in chapter 1 is experienced as an acceleration of time.³⁸ It reenacts the authority of the foundational past and prophetic time rather than a narrative of linear progress. The individual and collective prayers in Tahrir Square regulated by shari'a not only disrupted the spatiality of state law but also the latter's temporality. While the time-space of contemporary shari'a may be compressed by economic and administrative time patterns external to shari'a in major urban centers such as Cairo, those time patterns are suspended during major political mobilizations. The performance of acts of worship in Tahrir Square accentuated the distinctiveness and value of the time regulated by shari'a and provided a paradoxical "slowness" and "deceleration" of time in the midst of its revolutionary acceleration.

DISPLACEMENT

In this book, I am proposing the notion of *displacement* to comprehend the changes associated with contemporary shari'a, as an alternative to the narrative of the demise of both shari'a and its attached forms of life. *Dis-placement* sheds light on the spatial dimension of shari'a in relation to the places where shari'a used to be and is lived. Displacement is also a temporal concept, as the transmission of shari'a's knowledge and practices have also been displaced.

The notion of displacement is often associated with the experience of violence and trauma.³⁹ Yet displacement is not necessarily a loss, as this book studies how new spaces (the occupation of square and the "public space"), new practices (revolutionary mobilizations), and new areas of jurisprudential knowledge (jurisprudence of the revolution) have been added to the purview of contemporary shari'a. Displacement means also that the very relation between past and present in the production and reception of knowledge and its transmission are subject to change, enabling scholars to reclaim different authoritative pasts as a gesture to revisit inherited categories of knowledge (such as the *madhhab* or juridical school).

As mentioned above, in Ibn Khaldun's *Muqaddima*, civilization is fundamentally a way of inhabiting (earthly) space through collective life, understood as the telos assigned by God by which humans have been given a responsibility of care (*i 'timār al-'ālam bihim wa istikhlāfihi iyyāhum*).⁴⁰ This inhabiting of the world requires human activities (government, modes of subsistence, sciences, arts and crafts) mediated by the revelation and revealed law, and instantiating this civilizational telos. Civilization is fragile because its components are exposed to the possibility of destruction or vanishing, but this fragility does not preclude the possibility of revivification.

The (Khalidunian) study of civilizations is, then, the study of dis-placements through which activities, and more fundamentally, ways of inhabiting the world, may vanish, be preserved, or be revived. These displacements are related to events whose meaning and significance unfold when the thinker relates them to the conditions of their occurrence (among other things, to the rise and fall of power and the "succession of states and conditions"), that is, understanding how accidents (*a 'rāq*) affect essences (*dhāt*).⁴¹ The transmission and preservation of knowledges and ways of inhabiting the world is not a linear process and can be interrupted and displaced, temporally and spatially, by civilizational changes and the weakening of states. As Ibn Khaldun writes in reference to his own time: "The chain of transmission of knowledge in this era was almost interrupted for the people of the Maghrib because of the decay of civilization and weakening of states" (*sanad al- 'ilm li-hadhā al- 'ahd qad kāda an yanqāṭi 'a 'an ahl al-maghrib bi-ikhtilāl 'umrānihi wa tanāquṣ al-duwal fīhi*).⁴²

In twentieth-century Europe, displacement has notably been associated with Heidegger (and with a different meaning and use by Freud, Benjamin, and Derrida). Heidegger was interested in grasping what could be lost in the human condition of displacement but also unveiled in the (re)occupation of space in relation to dwelling associated to places.⁴³ Being-in-the-world entails the ability to remain in place by which place is lived and being situated. Yet the possibility of dwelling is not exclusively associated with the premodern or foreclosed with the modern condition. Rather, it is a perpetual quest allowing humans to rediscover place: "The real dwelling plight lies in this, that mortals ever search anew for the nature of dwelling that they *must ever learn to dwell*."⁴⁴

What Heidegger describes as contemporary homelessness and (in)ability to dwell is intrinsically linked to the use of language and its relation to experience. Language itself is the "house of being. In its home human beings dwell."⁴⁵ But being able to experience the ontological nature of language is only a potentiality that rests upon how language is not only used as a mere tool but becomes a destination in itself, which requires that humans find their "way to language." For Heidegger, thinkers and poets (and one may add prophets), through their work on and with language, are the "guardians of this home," bringing the "manifestation of

being to language.” Language is in itself a site of experience that adds to the world’s actuality. Representational language positing the world as a distinct reality to be represented and acted upon (the divide subject/object) forecloses the possibility of experiencing language as an ontological place, that is, experiencing the thingness and worldliness of things.⁴⁶

In Islam, revealed speech is a form of language that is revealing *the* truth, not only verbally through the narration of a cosmology of the material and the non-material, the visible and the invisible, but also through the prescribed deeds by which revealed speech is lived and embodied, presentified and actualized. Those forms of speech and deeds, like the *shahāda* (bearing witness) uttered by the muezzin in the call to prayer and by the performing believer in the daily act of prayer, are, whenever performed, an actualization of and testimony to the truth of revelatory speech. Besides the recitation and listening to the Qur’an, revealed speech is also instantiated through the mediation of the knowledge of jurisprudence (as developed by *fiqh*) and the knowledge of the self (as developed by Sufism) that are forms of language reflecting, and derived from, the language of revealed speech.

Language is also both the home for, and vehicle of, displacement, through the translation of European categories attached to new institutions, practices, and spaces. Hence “law”—that is, positive law produced by the nation-state (and the colonial empire)—is translated as *qānūn*, a word that becomes widely used to refer to this new reality. While *qānūn* introduces a duality with shari‘a, it carries with it the older sense of *qānūn*, widely used by the Ottomans in reference to the sultan’s normative purview in relation to local practices and usages. This contemporary duality informs thinking about shari‘a as a law rather than as an episteme (or put another way, as both law *and* episteme), and raises the question of the distinct conceptual genealogies of shari‘a and (Western) law informing the present use (and misuse) of these two word-concepts.

In contemporary times, shari‘a is co-constitutive of reality in the time-spaces (the mosque, the Sufi building, the square studied in this book) of its instantiation through forms of production of shari‘a knowledge about jurisprudence and spirituality embodied and lived by its subjects. Yet at the same time most calls to apply shari‘a by the state are discourses based on representational language assuming a divide between shari‘a and reality to be overcome by the state. As shown in chapter 7, key Islamic thinkers as different as Muhammad Abduh and Sayyid Qutb exemplify this duality of contemporary shari‘a. Their thought jointly encompasses representational reality projecting shari‘a’s holistic implementation in the future and its continuous fragmented instantiation in the here and now.

The question of shari‘a’s relevance and authority in contemporary times is better explored when shari‘a is studied in relation to its knowledges. These enable discourses of truth in given time-spaces, sustained by experience, as the set of

statements associated with normative language requires a circularity between what those statements say about the world and what is happening in the world. The normative language requires that its prescriptions are followed with corresponding deeds if it is going to be authoritative. As shari‘a is addressing primarily the self, performing the five daily acts of worship prescribed by Islamic jurisprudence instantiates the truth of shari‘a through and for the self but also through and for others in the time-space of social interactions informed by selves cultivated through prayer.

OUTLINE

As mentioned earlier, I am interested in studying shari‘a as an episteme, and more precisely, in the forms of shari‘a knowledge that have been formulated and accumulated by classical and contemporary Islamic scholars in response to epistemic questions and problems raised in specific times and spaces. While shari‘a involves the continuous prescription and proscription of beliefs and deeds, it is not a fixed set of immutable legal rules that can be merely identified and listed. Rather, it entails generative forms of knowledge involving certainty and conjecture in relation to situations grounded in time and space. Therefore, while this comparative and interdisciplinary anthropology of shari‘a and law is not an ethnography, I nevertheless study distinct and yet interrelated dimensions of the revealed law of Islam (political, spiritual, ethical, epistemic, and rational) from the perspective of Sunni Islam, starting with brief ethnographic accounts of instantiations of shari‘a in given time-spaces associated with the Islamic “present” and the 2011 uprisings in Egypt. This revolutionary event offered a moment of uncertainty and suspension of state law in which the duality between shari‘a and state law, their right place and their relation to the (re)foundation of the polity, was a matter of public debate. I study different iterations of shari‘a in the broader revolutionary and post-revolutionary context as an illustration of my argument about the fragmentary instantiations of shari‘a in distinct time-places, notably in Sufi spaces (*al-Ṭariqa al-Shādhiliyya*), or in spaces of transmission of knowledge such as mosques and centers of learning (Al-Azhar), or in public spaces gathering protesters (Tahrir Square).

Notably, I study Islamic jurisprudence (*fiqh*) in relation to other shari‘a knowledges (Sufism, *kalām*, philosophy) with the following understanding: (1) Islamic jurisprudence relates revealed speech to facts, events and deeds; (2) Islamic jurisprudence requires from scholars a work of interpretation of revealed speech and reasoning out of which rules can be formulated; and (3) revealed speech as displayed in the Qur’an and the Sunna is the ground of evidence for jurisprudential reasoning and argumentation. Islamic scholars cannot utter a legal opinion without evidence grounded in revealed speech, and while they may not agree on which evidence can be relied on to formulate a rule, they still agree on what makes a

textual passage from the Qur'an and the Sunna acceptable as evidence for legal reasoning. It is on the basis of this understanding of Islamic jurisprudence that I am interested in its relationship to politics, spirituality, ethics, knowledge, and rationality that are, as I will show, constitutive dimensions of shari'a.

For the lettered reader familiar with Islam, it may seem counterintuitive to claim that a book on shari'a involves the study of other disciplines such as Sufism and philosophy, or intellectual practices such as forms of argumentative reasoning that are not usually associated with a revealed law, let alone the revealed law of Islam. This inquiry may be better understood when recalling that I study how classical and contemporary Islamic scholars deal with shari'a following epistemic practices claiming the authority of the revelation and relating truth-claims to evidences based on revealed speech as captured by the textuality of the Qur'an and the Sunna.⁴⁷ This is true not only for Islamic philosophers (Al-Farabi, Ibn Rushd, Ibn Sina) attempting to carve a space for reason to thrive autonomously from the revelation, or for Sufis relying on experiential knowledge, but also for jurists (Ibn Taymiyya) who would refute the claims of the philosophers and *kalām* scholars on the basis of evidence involving *both* reason and revelation. Moreover, Islamic philosophy does not deal with revealed speech as its primary object, but nevertheless provides an account of the revelation and the revealed law and acknowledges their truth and authority for the regulation of the life of the community.

Therefore, any attempt to deepen our understanding of shari'a and the intellectual-cultural practices associated with it requires the study not only of jurisprudence (*fiqh*) or the sources of jurisprudence (*uṣūl al-fiqh*) but also other forms of knowledge (Sufism, *kalām*, and philosophy) and the ways in which they are intertwined with the revealed law. However, my inquiry should not be understood as an attempt to deny the distinctiveness of each of these disciplines and the disagreements between Islamic scholars. Rather, instead of confining shari'a to jurisprudence and the sources of jurisprudence, I suggest that other forms of knowledge deal with shari'a, each one from its own perspective and with a language and a set of shari'a questions that are proper to it.

At the same time, when compared to modern forms of knowledge dealing with nature and with the "human" and contesting the claim to truth of the revelation, disciplines such as jurisprudence, the sources of jurisprudence, Sufism, *kalām*, and philosophy share a similar epistemic premise, acknowledging the truth and authority of the revelation and the revealed law. From this comparative perspective, all these disciplines can be grasped in their unity and are based on a distinct episteme that would encompass various forms of evidence (textual, speculative, and experiential) across disciplines and within each discipline. My book is precisely an attempt to bring to light the epistemic language and the evidential regime displayed in shared assumptions and agreements between Islamic scholars of various disciplines, as much as in disagreements between them. It is not only an invitation to

better grasp the distinctiveness of the classical Islamic episteme, but also an inquiry into the ways in which the modern rationalist episteme informs the scholarly work of contemporary Islamic jurists and thinkers, relating classical forms of knowledge to modern life.

Part 1 shows why Foucault's "care of the self," as used in the anthropology of Islam, is not relevant in the Islamic context, and proposes rather the idea of a *contained* and *serving self* as more pertinent. It explores the relationship between shari'a and inner self in the exercise of power through the study of Islamic legal opinions (fatwas) dealing with the 2011 revolutionary event in Egypt, and studies the constitutive tensions and continuities between inner states and "external" deeds in the relationship of the self to shari'a. These tensions are exemplified in the assessment of the ruler's faith (*imān*), understood as the sum of his "external" deeds mirroring his inner moral state, and informing the jurisprudential knowledge authorizing demonstrations against the unjust ruler. With conceptual comparisons between state law and shari'a in their relation to revolution, will, and sovereignty, Part 1 attends to shari'a's incompleteness and limited effectiveness in both classical and contemporary Islam through the study of the relationship between shari'a, material power, and inner self in the regulation of the caliphal and post-caliphal Islamic polity. The advent of state law displaced shari'a and shed a new light on the latter's projection as a totality and instantiation in fragments in given times and places.

Part 2 is interested in the knowledge dedicated to the inner self, known as Sufism, and studies the extent to which spirituality and knowledge of the inner self are entwined with shari'a rules through an analysis of practices in the *Ṭarīqa al-Shādhiliyya*, one of the most influential Sufi brotherhoods in Cairo. Part 2 offers a genealogy of spiritual ethics in Islam that shaped the intertwinement of shari'a with spirituality in classical Islam and traces the contours of the knowledge of spiritual ethics dealing with inner states distinct, and yet intertwined, with Islamic jurisprudence (*fiqh*) devoted to "external" deeds. It then revisits the status of the self in recent works of anthropology (Saba Mahmood) and Islamic studies (Shahab Ahmed), and conceptualizes the relationship between the truth and the good as well as the distinction between "doing" and "being" enabled by the twin knowledges of the law and the self, and by both embodiment and disembodiment.

Part 3 conceptualizes Islamic jurisprudence (*fiqh*) in a novel way by including acts of worship not only as integral to the discipline, but as its most important component. Part 3 offers an alternative to the thesis of shari'a's structural death (Wael Hallaq), and shows that, with the inclusion of worship and its multitude of daily acts, shari'a has been rather *dis-placed* into a new normative duality with state law involving distinct, and yet overlapping time-spaces. It studies how the jurisprudential distinction between worship and social interactions formulated by contemporary Islamic scholars should be understood as a response to the consti-

tution of “the new real” in modern times as an epistemic problem for Islamic legal knowledge calling for the reformulation of a set of generative rules (*uṣūl*) upon which jurisprudential norms regulating collective life could be produced. Here, I shed light on the constitution of the “present” as a source of authority in the production of Islamic legal knowledge that is a decisive (and yet unnoticed) shift.

Part 4 explores the extent to which distinct Islamic knowledges are part of the same episteme. It studies *kalām* (and its overlap with philosophy) as a discipline that not only deals with beliefs and creed as objects of knowledge but also enables the truth of other shari‘a knowledges, and sets the foundational epistemic premise for revealed speech to be received and deciphered. I demonstrate that the anthropology of Islam cannot be restricted to practices and should also deal with non-practical modes of being in the world, such as beliefs and non-practical knowledges. Part 4 analyses further the epistemic conditions of truth production in the discipline known as the sources of jurisprudence (*uṣūl al-fiqh*), and investigates how rule production is always a process in the making by which shari‘a is a generative law rather than a set of fixed and immutable rules. Here I look closely at the ways in which contemporary Islamic scholars who practice *ijtihād* (the highest form of legal reasoning) mediate between two epistemic-legal languages as they reenact the authoritativeness of revealed speech within the contemporary polity structured by the language, forms, and episteme of the modern state law.

While I develop conceptual comparisons between shari‘a and law throughout the book, part 5 deals more specifically with the genealogy of Western law and ethics, and raises the question as to what it means to write a Western history of the self in relation to the “universal” (Charles Taylor). Starting with Augustine’s conception of the law and self in a context where the Church did not have legislative power under the Roman Empire, part 5 traces the shift to a juridicization of the care of the inner self back to the eleventh century, when canon law became the master knowledge formulated by the Church. Part 5 attends to the distinction and relationship between *forum internum* and *forum externum* that were central in the deployment of the Church’s sacramental and jurisdictional power over souls and bodies under a legal episteme based on a hierarchy of laws to which the law formulated by the prince was subjected. Part 5, then, discusses the shift from the theological-legal regime regulating the colonial conversion of Indians to Christianity in the sixteenth century to the civilizational conversion of the nineteenth century that affected shari‘a’s materiality and Muslim selves’ bodies. It shows how this shift was enabled both by the Lutheran Reformation (associating faith exclusively with the inner self and rejecting the law of the Church), and the development of state law (theorized by Hobbes) by which the law became an exclusive monopoly of the state interested in survival of bodies rather than the salvation of souls. Part 5 then studies the production of a new (Kantian) universalist moral language based on the free autonomous will located in the inner self, and a new (Hegelian) universalist and

ethical history of rationalization, freedom, and power, mirroring the European legal codes of the late eighteenth and early nineteenth centuries while enabling their conceptual circulation outside Europe in colonial and postcolonial times.

Part 6 attends to the use of reason in relationship to revelation in shari‘a knowledges. It studies how shari‘a, associated with irrationality by influential social theorists such as Max Weber, became itself an object of knowledge and “rationalization” by different instantiations of modernist reason in colonial and postcolonial contexts that transformed the place of Islamic jurisprudence within Muslim societies and shaped the ways in which the relationship between reason and revelation was perceived and represented by Islamic scholars and thinkers. Part 6 analyses how shari‘a is represented in political and legal debates about European identity. It delves into the apparent paradox of Kantian morals securing the autonomy of the self widely reclaimed by influential contemporary social scientists (Durkheim) and philosophers (Habermas), and yet informing a prescriptive morals and a set of beliefs (particularly in France) when it comes to relations with the former colonial Muslim other that has now become part of the collective European self. Finally, part 6 explores how distinct forms of reasoning are displayed not only in jurisprudential analogical reasoning (*qiyās*), but also in the way the world is apprehended—for example, when assessing the meaning and truth of facts, events, and situations. I closely examine how the classical disciplines of Islamic philosophy and *kalām* are mobilized by Muslim scholars and thinkers in order to articulate an epistemic language relating reason to revelation, and lay the (re)foundations for an Islamic polity by re-assessing the guiding role of shari‘a.

PART ONE

Politics

Jurisprudence of the Revolution

Any inquiry into ethical practices relies on a set of assumptions regarding the status of knowledge and truth.¹ The divorce of knowledge from ethics, notably initiated by Descartes, is one of the defining features of the modern age in the West.² A worldview in which the task of science is devoted to the knowledge of the good life, or in which the very act of knowing is considered to be moral, is either relegated to the past, notably Greco-Roman antiquity, or needs to be reinvented, but does not belong to the present.³

Research about forms of knowledge shaped by ethical imperatives in the anthropological present in non-Western cultures runs the risk of being assimilated into “previous” practices from which European thinkers break in order to constitute themselves as “modern.” Yet these practices, shaped by forms of knowledge inherited from the past and inscribed in collective memory, are constituted by global contemporaneity as much as they are constitutive of it.

Michel Foucault’s work on ethics, more specifically regarding the “care of the self” and the “technologies of the self,” has been widely used in recent works in the anthropology of Islam, and more generally in anthropological works dealing with ethics. Foucault’s insights can potentially be useful in naming practices informing cross-cultural and cross-temporal comparisons, but his categories have been used mechanically in the anthropology of Islam without giving due attention to the specific context to which Foucault referred when mentioning “the care of self,” and without elaborating on the extent to which they are relevant to the Islamic context.

There are several problems with how scholars use Foucault’s work on the self to describe Muslim practices. First, when Foucault writes extensively on “the care of the self,” it is in the third volume of his *History of Sexuality*,⁴ as part of his

investigation into the relationship between desire and pleasure, and as a historical hypothesis explaining the increasingly austere sexual practices in late antiquity (the devaluation of pleasure as an end, the exclusion of sexual activity outside marital relations) that were usually associated with Christianity, and previously understood as a consequence of new repressive legal norms. Foucault introduces “the care of the self” in order to highlight that this change comes as a continuation of the older ethics of “self-mastery” by which the self is seeking to control and regulate his own desires. He argued that it was part, more broadly, of an “aesthetics of existence” that often comes as a shift in the individual’s life, “a conversion (ad se convertere)” moment and “an existential impulse by which one turns in upon oneself” enabling sovereignty over oneself, “self-possession,” or “positive enjoyment” (“to enjoy oneself, to take one’s pleasure with oneself, to delight in the self alone”).⁵

It is clear that, if not elaborated further, this ethics of self-mastery associated to sovereignty and “aphrodisia” attached to the “care of the self” is not relevant in the settings studied by anthropologists of Islam, let alone if the central argument of those works is to describe and analyze a heteronomous ethics by which the subject submits to an external authority.⁶ There is a major difference, if not a contradiction, between the care of the self (and attached techniques and technologies) initiated by the self as part of an “aesthetics of existence,” and ethical practices organically linked to the revealed law (shari‘a) through the mediation of jurisprudential knowledge (*fiqh*). Foucault’s point is precisely to show that, in ancient Greece, the self cared for herself *independently* from a law or any juridical frame. This is a central point that renders the extensive and uncritical use of Foucault’s work on ethics in some of the most influential works of the anthropology of Islam and Islamic Studies, namely Saba Mahmood’s *Politics of Piety* and Wael Hallaq’s *Impossible State*, highly problematic. Mahmood overlooks this point in her extensive discussion of Foucault, which actually contradicts her endeavor to study a heteronomous ethics. Similarly, Hallaq devotes a whole chapter to the “technologies of the self” without a critical discussion of its relevance in the Islamic context (“Paraphrasing Foucault, one might say that the shari‘a subject was the site of the care of the self”).⁷ Now, Foucault alludes to a subsequent form of the care of the self in relation to Christianity where subjectivation is attached to the external authority of the Church; in this form certain practices regulating sexual austerity (that are also “technologies of the self”) are inherited from antiquity and reshaped in relation to self-renunciation, and as a path to salvation and eternal life. Hence, it is not accurate to stress that in “Foucault’s framework,” “the importance of these practices does not reside in the meanings they signify to their practitioners, but in the *work they do* in constituting the individual,”⁸ because there is a critical difference as to *how* technologies of the self are formulated and *how* the self is subjectivized when those technologies are part of an ethics of self-mastery, aesthetics of existence, and

aphrodisia, rather than as part of an ethics of self-renunciation and submission to theological-legal authority. Obviously, my point is not that Foucault's work on ethics cannot be used in other cultural contexts, but rather, that its use in anthropological works in Islamic context, and more generally contexts other than antiquity, should be discussed critically and attend to these major differences, not least because "care of the self" is a literal translation from Greek "*epimeleia heautou*," initially emanating from a specific culture and time-space.

The second issue is the way the notion of the "care of the self," "techniques," "technologies of the self," and more generally Foucault's study of ethics, have been used in relation to an "individualizing trend"⁹ without relating it to the care of, and relationship to others. The question as to whether Islamic ethics is an ethics centered around the self that does not deal with others, or as to whether a hypothesis of a self-centered ethics studied in different ethnographic contexts is an invitation to think of Islam as a self-centered religion, is not discussed. Absent this elaboration, those anthropological works leave the impression that the status of others is peripheral in Islamic ethics. Actually, Islamic ethical practices entail a conception of a self whose humility with, and service to, others is informed by the self's humility in her relationship to God. Hence if for Foucault, in ancient Greece, "the care for others should not be put before the care of oneself,"¹⁰ it is hard to see the relevance of the "care of the self" in Islam without an analysis of the status of the self in her relationship to others, that may bring us to the conclusion that this notion is not pertinent in the Islamic context. Here too, using Foucault's "care of self" would have required a discussion of the relationship between self and others in the third part of the *History of Sexuality*. Foucault casts it under the primacy of the self, which is a major difference (if not a contradiction) with Islamic ethics seeking to contain the self so as to better serve God and others.

Indeed, what is described as "care of the self" in recent ethnographies on Islam is actually more of what I would call *a containment of the self*, *a contained self*, as to shape *a caring self* and *a serving self*, that is, to better serve God and others, notably the family and the close community. As I will show in this chapter, valued ethical practices are related to the service to the community, and, ultimately, to possible sacrifice for its well-being informed by divine teachings. I am not saying that Islamic ethics has no interest in the self; as we will see in part 2, Sufism is a knowledge of the self. Rather, my point is that, while giving due consideration to the self, the relationship between self and others should be conceptualized through the distinction between inner self and outer deeds (illustrated in this chapter by the assessment of the ruler's faith and injustice), and through the mediation of Islamic knowledges, notably jurisprudence (*fiqh*) regulating the relationship between worship (*'ibādāt*) practiced by the self and her interactions (*mu'āmalāt*) with others, whether at the time of exceptional events such as the 2011 revolutionary upheaval or in everyday life. (See also chapters 5, 6 and 7).

Third, anthropological works interested in ethical practices in Islam have not studied the centrality of knowledges in ethical practices, and how Islamic disciplines (jurisprudence, Sufism, *kalām*) enable those practices in both distinct and inter-related ways. While in this chapter I study Islamic jurisprudence's role in the regulation of the polity through the relationship between inner self and outer deeds, and between faith and justice enabled by the very discipline of jurisprudence, I also study Islam, throughout this book, as an *ethical episteme* with different disciplines. I ask what they do to the relationship between inner self and outer deeds, and between self and others. In addition, the study of ethical practices cannot do without a conceptualization of the unseen (*ghayb*), as all those practices are attached to knowledges enabled by, addressing, or assuming the invisible, whether this refers to God, the world of non-material beings, or the inner self. In parts 2, 3, and 4 of this book, I explain extensively why the study of ethical practices in Islam requires the simultaneous study of Islamic knowledges, and what they do to selves and their interactions with others, the (visible) world, and the *ghayb*.

In this chapter, I study ethical practices attached to and enabled by jurisprudence—that is, not a knowledge whose direct object is the self. My purpose is to show that the jurisprudential knowledge of the revealed law as the site of the relationship to God determines the kind of relationship one may have to oneself and to others. To study those questions in terms as close as possible to those structuring the works of Islamic scholars, I explore procedures of truth-seeking, modes of reasoning, and hermeneutical techniques in the formulation of rules in legal opinions (fatwas) authored by Yusuf al-Qaradawi¹¹ (one of the most influential contemporary Islamic scholars)¹² at the time of the Egyptian Revolution (2011). This chapter also explores the relationship between interiority and exteriority in ethical practices enabled by rules formulated in these fatwas and exemplified by the assessment of the ruler's faithfulness (*imān*). It studies the extent to which the very revolutionary gesture authorized in the fatwas informs al-Qaradawi's own legal and ethical practice, and enlightens anew the relationship between the inner and the outer as well as between the self and others.

TRUTH-SEEKING IN THE PRODUCTION OF FATWAS

A fatwa is a legal opinion formulated by a qualified scholar whose knowledge and skills are acknowledged by his peers. It is a way for an individual or a group, not knowing what needs to be done regarding a specific question, or hesitating about what course of action needs to be taken, to address the law. Usually a response to a question asked by someone concerned with Islamic duties, a fatwa may also be formulated at the initiative of a mufti in order to orient the community to a new situation. Fatwas deal with all kinds of issues, including beliefs, creed, acts of

worship, marriage and divorce, social interactions and transactions, and acts related to the community's political life.¹³

From the perspective of Islamic jurisprudence, new events and occurrences (*nawāzil*) constantly call for rules to be formulated dealing with the specific case. While Islamic jurisprudence has for a long time been portrayed as hermetic to social change,¹⁴ several contemporary scholars of Islamic law have shown over the last thirty years that fatwas have been the main site of articulation between the foundational legal principles and evolving reality.¹⁵ When dealing with cases for which there is no clear textual proof reaching certainty (*qaṭ'ī*), nor consensus among scholars (*ijmā'*), and that have no legal precedent in the legal school (*madhhab*) to which he belongs, it is expected that the mufti will rely on his personal effort to extract a new rule from the shari'a's sources (*ijtihād*).

For several Islamic scholars, the Egyptian Revolution, preceded by the Tunisian Revolution, was among these *nawāzil* for which Islamic jurisprudence had no precedent and no clear textual proof in the form of a text explicitly discussing demonstrations and revolutionary protest. In this context, the only way for Islamic scholars to formulate a rule is to rely on *ijtihād*. *Ijtihād* requires that the scholar abide by the rules of truth-seeking and truth-finding as delineated by the discipline of *uṣūl al-fiqh* (sources of jurisprudence). Yet, because of its root in *ijtihād*, the rule formulated in this kind of fatwa is not considered to be the product of certainty (*qaṭ'ī*), but only the result of probable thought (*ẓannī*). The scholar who practices *ijtihād* (*mujtahid*) is never free from making mistakes.

On the one hand, the rule formulated in a fatwa as a result of *ijtihād* does not produce absolute certainty, and leaves a space for doubt. On the other hand, the people who ask a mufti a question need a clear rule to follow, formulated by a trustworthy scholar known for his knowledge and integrity. It remains the Muslim's choice to follow the rule uttered by the fatwa or not, and there may be situations in which he has to choose between contradictory rules formulated by different muftis, as was the case in Egypt at the time of the Revolution.

Al-Qaradawi's fatwas dealing with the political events in Egypt, and more generally in the Arab world since the 2011 uprisings, did not only give responses to specific cases, but instituted a new sub-branch of Islamic law, which al-Qaradawi calls "jurisprudence of the revolution" (*fiqh al-thawra*).¹⁶ This may be understood as part of the jurisprudence dealing with political matters (*al-fiqh al-siyāsī*) that he studied in a previous book entitled *Lawful Politics (al-Siyāsa al-Shar'iyya)*.

Although classical Islamic jurisprudence focused mainly on acts of worship (*'ibādāt*), marriage, and social interactions and transactions (*mu'āmalāt*), "political" matters were not absent, for there are also classical books of law dealing with governmental issues. Examples include Ibn Taymiyya's *Lawful Politics (al-Siyāsa al-Shar'iyya)* or al-Mawardi's *The Rules of Government (al-Aḥkām al-Sulṭāniyya)*.

Islamic jurisprudence would usually emphasize the duties of the subjects and the ruler, and the conditions under which the latter may be deemed illegitimate. But al-Qaradawi's work is the first time an Islamic scholar has used the expression "jurisprudence of the revolution" to designate a new sub-branch of Islamic law.¹⁷

Al-Qaradawi's fatwas are not only specific responses to questions raised during the revolutionary moment, they are also, for him, "moral lessons to the new generations" (*akhdh al-ajyāl al-ibra*).¹⁸ Yet this ethical and educative dimension of the fatwa is not conceivable without its argumentative ability to establish the truth. For al-Qaradawi's concern in his fatwas was to demonstrate the falsity of other scholars' sources and argumentation, and the legal validity of his own. His fatwas are a way to initiate a new branch of legal studies, "the jurisprudence of the revolution" (*fiqh al-thawra*), in a context where Islamic scholars did not have a unified position regarding the lawfulness of "revolutionary" political acts.

Three fatwas authored by al-Qaradawi are relevant here. The first is an answer to the question "Are peaceful demonstrations authorized by Islamic law?" and deals with the lawfulness of peaceful demonstrations and protests long before the mobilization of the "Arab Spring." The second is a "response to the fatwa (issued by the mufti of the Republic) stating that the demonstrations are an act of defiance against the legitimate ruler." The third is a response to the question: "Is the action of supporting peaceful demonstrations a way to provoke disorder (*fitna*)?" Both the second and the third fatwa were issued after the demonstrations that started in Egypt following the fall of the Tunisian president Zine El Abidine Ben Ali.

According to the arguments of scholars who enjoined Egyptians to refrain from supporting the demonstrations, it is the Muslim's duty to be patient in the face of a corrupt and tyrannical ruler, to accept God's decree (*qaḍā' Allah*), and to wait for God's relief. The Muslim should not engage in any act of resistance in order to preserve the unity of, and avoid his exclusion from, the community. To support their prescription, these scholars quote the Qur'an, *Sūrat al-Nisā'*, 59: "Obey God, obey the Prophet and those in authority among you." They also rely on hadith Hudhayfa, in which the Prophet Muhammad is reported to have said: "There will be after me imams who will not be as well guided as I am, and who would not follow my practice. There will be among them men with devils' hearts in a human's body (*qulūb al-shayāṭīn fī juthmān ins*): 'O God's Prophet, how can I behave in the face of them?' He answered, 'Listen to the ruler and obey him, even if he hits your back, or takes from your money, listen and obey.'"¹⁹

For al-Qaradawi, although this hadith is mentioned in the authoritative collection of *Ṣaḥīḥ Muslim* in the chapter dedicated to government (*imāra*), it cannot be considered among the "original sayings" (*aḥādīth al-uṣūl*), which are the most reliable. Rather, it is a weak hadith for which the chain of transmission has been interrupted (*mursal*).²⁰ Here, truth-seeking relies on a procedure of authentication of hadiths as delineated by the discipline dealing with the sources of jurisprudence

and the science of hadith. While the authentic hadith is the one for which transmission from the Prophet to the time of its collection in authoritative books of hadiths has been continuous (*muttaṣil*), the doubtful hadith is the one for which chains of transmission have been interrupted (*munqaṭi*).²¹ Usually, contemporary muftis use secondary sources coming from scholars known for their expertise in the matter of transmission to authenticate the hadiths they rely upon, or to question their truth. When a scholar succeeds in pointing out the inauthenticity of a hadith used in a fatwa, the rule formulated in the latter may no longer be considered valid.

The very process of formulating rules derived from the revealed law consists in establishing their truth. The two foundational textual sources from which Islamic scholars formulate legal rules are the Qur'an and the Sunna (which includes the hadiths). The main task of the discipline known as "the sources of jurisprudence (*uṣūl al-fiqh*)" is to delimit the hermeneutical procedures securing the rule's truth. In this truth inquiry, the scholar formulates rules that are differentiated according to several levels of certainty and doubt, which are themselves related to the levels of certainty and doubt of the original textual sources. Since there is no doubt regarding the authenticity of the Qur'an, the main problem for Islamic scholars regarding the truth of the textual sources lies in the Prophet Muhammad's reported sayings and deeds.

The rule's truth is not only related to the authenticity of sayings collected in books of hadiths, but also to the right understanding of the Qur'an's words. Islamic scholars whose work was dedicated to *uṣūl al-fiqh* developed a method of establishing the meaning of the verses of the Qur'an used for legal purposes. The discipline of *uṣūl al-fiqh* is usually understood as the science allowing the scholar to secure (*ithbāt*) the formulation of the rule relying on the jurisprudence's sources and evidences (*adilla shar'iyya*).

In his attempt to shed light on the falsity of the rule enjoining the Muslims to obey the ruler, al-Qaradawi shows that scholars quoting *Sūrat al-Nisā'*, 59 ("Obey God, obey the Prophet and those in authority among you") in support of their position are relying on a wrong hermeneutical procedure, using a partial reading of the relevant passage of the Qur'an. Rather, those scholars should take into account the particular group of people God is addressing in this verse by starting from its beginning: "O you who have been faithful, obey God, obey the Prophet and those in authority among you." Now that the last word "*minkum* (among you)" refers to the first words—that is, the faithful (*mu'minīn*)—the meaning of the verse changes significantly. Obedience to rulers is no longer an absolute duty but a conditional one, for the rulers mentioned in this verse are not only those merely occupying a position of power, but must be "among the faithful." Hence, for al-Qaradawi, there is nothing unlawful in taking part in demonstrations against an unjust ruler, because the latter's rule contravened faith (understood in contractual terms), and put him outside the community of the faithful.

JURISPRUDENTIAL TRUTH AND ETHICS

Recent studies on the anthropology of shari‘a have overemphasized its ethical dimension to the extent that they failed to grasp its epistemic dimension and the ways in which jurisprudential knowledge, instantiated here in the production of fatwas, actually *enables* ethical practices. One of those studies claims, “In casting fatwas as doctrinal pronouncements, as formal judicial opinions and, thus, a species of law conventionally understood, this view of the fatwa undercuts an integral ethical dimension of its practice.”²²

The formulation of legal opinions by scholar-jurists acting as muftis is both a scholarly act based on jurisprudential reasoning, and an offer of ethical guidance. The mufti’s ethical role is not conceivable without his knowledge and his ability to utter the truth of the law. In classical books dealing with the “sources of jurisprudence” (*uṣūl al-fiqh*), as well as in contemporary manuals of jurisprudence, the mufti needs to meet ethical requirements such as integrity and sense of justice (‘*adāla*).²³ The mufti needs also to meet scholarly requirements such as “deep knowledge” of the Qur’an and the Sunna, of Islamic jurisprudence and its sources, and doctrinal debates and differences between scholars. Hence, if on certain occasions the mufti does not display his reasoning or does not quote textual sources related to the case, this does not mean that legal knowledge is not constitutive of his authority.

Two distinct but related operations occurring in the encounter between the mufti and the questioner (*al-mustaftī*) should be highlighted: the utterance of the rule and advice. The mufti formulates clearly what is prescribed and what is prohibited according to his knowledge of the revealed law, but at the same time he is doing more than merely uttering the truth of the law, because he gives the questioner guidance (*irshād*) and advice (*wa‘z*). In that moment, the scholar does not act only as a mufti, but also as a man of call and preaching (*da‘wa*). For both mufti and questioner, it is a moment that allows them to get out of the casuistry of the law to recall and constantly expand the meanings of the law and its prescriptions. It is a way to put the law at a distance, not to reject it or to say it is peripheral in Islam, but rather to reaffirm its centrality and importance, and its ability to address the Muslim’s interiority and guide him in his existential choices. This ambivalence of the fatwa is illustrated by its double meaning, linguistic and legal. The verb *aftā* refers to the act of showing (*abāna*), making manifest (*izhār*) and guiding (*irshād*). In the sources of jurisprudence, the fatwa is understood as “the act of transmitting the legal rule from whoever knows it relying on evidence based on shari‘a (*dalīl shar‘ī*).”²⁴ From this perspective, the guidance of the fatwa is not possible *without* the production of knowledge and the reenactment of the truth of the law that it entails.

All fatwas do not have the same authority in the community of scholars and Muslims, and certain fatwas are much more authoritative than others. Here, we should make a distinction. Some fatwas deal with individual cases in a face-to-face

oral exchange (or a written one) and allow for a certain intimacy between the questioner and the mufti. On the other hand, there are exemplary fatwas issued by classical scholars (for example Ibn Taymiyya²⁵) as well as contemporary scholars (for example al-Qaradawi²⁶) known for their skills and the depth of their knowledge. These are relied upon in the training of Islamic scholars or emulated by other muftis. The distinction is, of course, complicated by the fact that exemplary fatwas have often been issued to treat an individual case or in a face-to-face oral exchange, similar to the ones issued in the Fatwa Council in Al-Ahzar or places such as the mufti's house (*dār al-muftī*). It is also complicated when fatwas dealing with individual cases are issued on TV programs or on the Internet, addressing vast audiences in which forms of close interaction between mufti and questioner based on intimacy are not possible. Most important, one should also take into account the fatwas that are not a response to a question of an individual or a group of individuals but a formulation of a rule at the initiative of the mufti to enlighten the community about what to do in face of an event or a situation not previously encountered.²⁷ From this perspective, a fatwa that has been put into a written form, or orally transmitted from one scholar or questioner to another, may have a history of various usages that may enable different kind of ethical practices that are not necessarily related primarily to the self. As in al-Qaradawi's fatwas dealing with the Egyptian Revolution, the fatwa may allow for ethical practices related primarily to the community's life and the relationship to others rather than the self.

The task of truth-seeking in Islamic jurisprudence exemplified in the fatwa is related to the broader ethical-practical dimension of Islamic knowledge (*'ilm*) which includes other disciplines: exegesis (*tafsīr*) of the Qur'an, the science of hadith, *kalām*, and Sufism. For both classical²⁸ and contemporary Islamic scholars and thinkers,²⁹ knowledge is both desirable in itself and as a means to the highest good, understood as "happiness (*sa'āda*) in the hereafter." One cannot be close to God without the appropriate knowledge that is not only contemplative but practical, and that addresses the individual in his effective duties. From this perspective, there is a close relationship between knowledge and deeds, for any act—including worship—relies on prior knowledge. Hence, the procedural search for truth in Islamic jurisprudence and other Islamic disciplines should constantly be balanced not only with an ethical commitment for truth but also with its ethical-practical *telos*, for the truth is meant to shape and nourish the Muslim's deeds.

TRUTH, FAITH, AND INTERIORITY

Relying on the notion of "Kadi Justice," Max Weber has famously argued that Islamic jurisprudence is "irrational" because it lacks a consistent relationship between *law making* ("the establishment of general norms which in the lawyer's thought assume the character of rational rules of law") and *law finding* ("the application of such

established norms and the legal propositions deduced therefrom by legal thinking, to concrete facts which are subsumed under these norms").³⁰ Although the flaws of his perspective have been underlined on several occasions by anthropologists and legal historians,³¹ Weber nevertheless raises an interesting point related to the relationship between law and fact-finding that has been taken up by later scholars.³²

Yet, I would like to explore here the question of fact-finding starting from a set of questions different from Weber's, whose work relies on a set of evolutionary assumptions about Islam and "rationality." When related to the twin issues of truth-seeking and ethics, the inquiry into law and facts raises the following question: What are the limits of what can be possibly known from man's deeds and interiority for the purpose of rule formulation in al-Qaradawi's fatwas, and more broadly, in Islamic jurisprudence?

In Islamic jurisprudence, the procedures of truth-seeking command both the formulation of rules and the finding of facts. When al-Qaradawi writes that President Mubarak does not belong to the faithful, he is making a truth claim. In Islamic jurisprudence, the search for truth is not only displayed in the scholar's attempt to establish the correct understanding of the texts, as well as their authentication (regarding the hadith), but is also discernible in the way he assesses characters, deeds, and events, and the way he constructs legal facts, for example when he is asked to give his opinion as a mufti. However, the ability of the scholar-mufti to have access to the truth of the fact reaches a limit and becomes problematic when he comes to assess an individual's internal state in a specific case.

The scholar-jurist who teaches Islamic jurisprudence, but also the mufti or the judge, usually relates the rule to observable deeds. The discipline of *fiqh* itself is often defined as the legal science dealing with deeds. It is clear that the centrality of deeds in *fiqh* is related to the limits of human knowledge as understood by Islamic scholars. Thanks to His exclusive access to the interiority of humans and their intentions, only God is the ultimate judge of the consistency between interiority and exteriority in the individual. In a court of justice, the judge, because of his inability to have access to the individual's interiority, can formulate opinions and judgments only on the basis of what can be observable and adjudicated—namely, the body's deeds and the uttered words. However, that does not mean that interiority has no part in the constitution of the Muslim legal subject or in the assessment of the individual's deeds, either in books of *fiqh* or in legal practice,³³ notably in the formulation of fatwas. Rather, there is a constitutive and productive continuity as well as tension between interiority (the "heart's deeds") and exteriority (the limbs) in the relationship of the subject to the revealed law (*shari'a*), as exemplified by the way that *fiqh* is understood in classical and contemporary jurisprudence.

This ambivalence is also related to the interrelatedness of deeds with beliefs. Beliefs are foundational (*aṣliyya*), and prior to deeds.³⁴ Moreover, the distinction between deeds and beliefs becomes more complicated when the latter, and more

generally, inner states and feelings, are understood as “deeds of the heart” (*a ‘māl al-qulūb*) that are not spontaneously given but need to be worked out for classical scholars such as Abu Hanifa, al-Ghazali, or Ibn Taymiyya.

To what extent does al-Qaradawi, by referring to faith in his legal argumentation, rely on the assessment of Hosni Mubarak’s interiority? In fact, when al-Qaradawi states that the Egyptian president is not a legitimate ruler because he cannot be considered as belonging to the “faithful,” he bases his judgment on Mubarak’s deeds and his role in the community. For al-Qaradawi, Mubarak is doing neither the lawful nor the good in the specific mandate expected from him. The deeds of a ruler who commits injustice, uses public money to increase his own wealth, falsifies elections, represses his own people, and helps Israel suffocate the Palestinians cannot be considered to belong to the category of lawful and good actions at all. According to al-Qaradawi’s interpretation, the ruler is a delegate, at the service of the community. He is responsible before God and before the people regarding the material and moral interests of the community. The ruler’s task is to protect the rights of everyone who has been entrusted to him and to rule with justice, as suggested by the Qur’an’s verses dealing with “the lawful politics” (*siyāsa shar‘iyya*) and the organization of government among the people: “God enjoins you to render trusts to whom they are due, and when you judge between people, to judge with justice” (*inna Allāh ya ‘murukum an tu ‘addū al-amānāt ilā ahlihā wa idha ḥakamtum bayna al-nās an taḥkumū bi-al- ‘adli*) (*Sūrat al-Nisā’*, 58).

Here, faith is understood by al-Qaradawi in contractual terms (*ta ‘āqud al-īmān*) in which the ruler did not fulfill his (external) obligations toward the community. However, it is not a reversal of the primacy of interiority over exteriority in faith, or a commitment to the juristic tradition dealing mainly with the external deeds, but is rather a reenactment of the relationship between inner states and outer deeds, in which the latter reflects the former.

In fact, for al-Qaradawi, the cultivation of interiority as the site of faith is a central dimension of Islam, explored in two books, *Faith and Life* (*al-Īmān wa al-Ḥayāt*) and *On the Path to God* (*Fi al-Ṭariq ilā Allāh*). The latter is inspired by al-Ghazali’s masterpiece, *The Revitalization of the Sciences of Religion* (*Iḥyā’ ‘Ulūm al-Dīn*).³⁵ In the first volume of *On the Path to God*, dedicated to “Spiritual Life and Knowledge,” al-Qaradawi stresses the necessary “balance between jurisprudence (*fiqh*) of rules and knowledge (*fiqh*) of ethical behavior (*al-tawāzun bayna fiqh al-aḥkām wa fiqh al-sulūk*).”³⁶ Here, al-Qaradawi uses the word *fiqh* both in its juridical sense, and its non-technical meaning, which may be translated as “insight” and “knowledge.”³⁷ Although al-Qaradawi’s aim in this book is to show how one may nourish one’s own faith, this does not mean that “the jurisprudence of external rules (*al-aḥkām al-zāhira*) can be neglected. Rather, these rules are an obligation but the balance is also an obligation: the balance between the inner (*bāṭin*) and the outer (*zāhir*), between deeds of the limbs, and deeds of the heart.”³⁸

The worshipper cannot reach the state of faith merely by making his body mechanically execute the rules, but needs to make his heart available to the revealed law. That is why most classical and contemporary Islamic scholars, including al-Ghazali and Ibn Taymiyya, differentiate between “*islām*” and “*īmān*.” The latter is a higher stage in the relationship of the worshipper to God, but it is impossible without the former. The sphere of *īmān* is also not limited to the inner self, for its effects can and should be displayed in the inter-actions of the faithful with others. Hence, in matters regarding government and the community’s life, the ruler is expected to act in a way reflecting a state of faith, that is, to act with justice and goodness, because the faithful ruler cannot be unjust or bad for the community. From this perspective, in al-Qaradawi’s fatwa, the internal state of President Mubarak is not proved, but can be assumed when one looks at his external deeds, facts that cannot be contested. If Mubarak’s case reflects the relationship between interiority and exteriority as displayed in injustice, the exemplary deeds of the revolutionary youth reflect a state of faithfulness.

JUSTICE AND ETHICAL EXEMPLARITY: SERVING THE COMMUNITY

In the revolutionary context, al-Qaradawi, through his ability to tell the truth of the law, is also an actor of the very social and political reality he assesses in his fatwa. For he is not only answering questions that had been asked regarding the lawfulness of the protest, he is also actively participating in the revolutionary movement against President Mubarak. In the following paragraphs, I ask the extent to which al-Qaradawi’s legal practice—in his fatwas as well as his own ethics—are informed and nourished by the revolutionary event and the ethical exemplarity and gesture of the revolutionaries. The truth of the law does not merely consist of producing the rule, thanks to a logical procedure securing the authenticity and meaning of the foundational texts and mastered only by the skilled scholar. In the revolutionary moment, the truth of the law is both a rule and an ethical commitment to justice uttered by protesters as well as the mufti, which enlightens anew the relationship between the self and others as well as between the inner and the outer.

On February 2, 2011, in a public statement that included Islamic legal prescriptions and was published in most of Egyptian newspapers, al-Qaradawi wrote: “Islam enjoins the community to fight the unjust ruler” with “all the peaceful means.”³⁹ He urged every Egyptian Muslim to participate in the Friday February 4 demonstration, proclaiming it “an obligation prescribed by the revealed law.”⁴⁰ The people participating in demonstrations against President Mubarak, he wrote, were engaged in “a peaceful struggle,” “a struggle with the tongue” (*jihād bi-al-lisān*), that can be assimilated to the hadith: “What is the best of all struggles (*jihād*)? The word of truth said to the unjust ruler.”⁴¹ Al-Qaradawi also stated that “whoever is

harmed or imprisoned or tortured while saying the truth to the unjust ruler, is in the path of God, and if he loses his life, he is a martyr (*shahīd*) for God." The status of *shahīd* is confirmed by the hadith quoted by al-Qaradawi about "the lord of the martyrs, Hamza Bin 'Abd al-Muttalib, who was killed after he stood in the face of the unjust ruler to enjoin him to do the good and stop the wrong."

At the limit of life, the struggle against injustice is both a form of self-sacrifice for the community and a way to bear witness to God's presence. The self is no longer relevant as "something" that should be taken care of, for it is able to envision its possible imminent annihilation. Yet it is still meaningful to the extent that it is the link to God and to others because its death is a promise of a better life for the community, and it opens up the possibility of an encounter with God in the hereafter. In the revolutionary moment, the ethical gesture of the people and the scholar-mufti's are one, for both are engaged in "the best of all struggles (*jihād*)": speaking the truth (*ḥaqq*) to the unjust ruler.

The Arabic word "*ḥaqq*" used in the hadith means both "truth" and "right." Here too, truth and law are one and the same, in which, to use a terminology of Islamic jurisprudence, "the rights of God" (*ḥuqūq Allah*) and "the rights of God's servants" (*ḥuqūq al-ibād*) have been violated. This identity between truth and right does not occur only in relationship to truth-seeking (as we saw earlier), but also in relationship to truth-uttering, a self-evident truth that does not need sophisticated legal arguments to be proven but requires common sense and a shared feeling of injustice.

The struggle against the unjust ruler consists not only in an "external" deed such as speaking the truth and demonstrating, but also requires an internal struggle that one engages with oneself. Talking about injustice is not only mentioning "cold" facts about the situation of the country; it is also a matter of emotions, for one "feels" injustice with one's "heart." This feeling of injustice may remain only enclosed in our interiority, or it may be transfigured in deeds aimed at putting an end to the situation of injustice. Following a hadith quoted by al-Qaradawi in his third fatwa, it is "the struggle" (*jihād*) of the heart that is prescribed to believers in the face of the wrong. For al-Qaradawi, when facing endless injustices, the heart reaches a state of "ebullition" (*ghalayān*) and "anger" (*ghaḍab*) to the point of rebellion. The negative feelings (hate) are transformed into positive deeds (peaceful demonstrations).⁴²

In a sermon (*khuṭba*) delivered on February 18, "Victory Friday" (*jumu'a al-naṣr*), in Tahrir Square, one week after Mubarak stepped down, in front of an audience of several thousand people and broadcast on Egyptian TV channels as well as on Al-Jazeera, al-Qaradawi talked mainly about the fight against injustice that is not restricted to Islam, but transcends religious belonging. Occurring right before the Friday prayer, the *khuṭba* is an invitation to reflect upon a topic chosen by the imam. Although it belongs to a different genre than the fatwa, it also deals with the duties prescribed by the revealed law. While the fatwa is usually a response to a question, often requiring an argumentation relying on a right usage of the

shari‘a sources, and allows the questioner to know the rule to be followed, the *khuṭba* is a moment in which the imam tries to reach “the heart” of the Muslim by relying on admonishing styles such as advice (*naṣiḥa*) rather than command (*amr*). It is an invitation to reflect upon oneself, as well as one’s relationship to God and to the community. It is also a way to make the Muslim available to the law, by expanding his understanding of it. However, it does not only address the grasping faculty of the Muslim, but also her ability to have feelings and emotions.⁴³

When the imam focuses on an event in his *khuṭba*, it is usually a way to think about its meaning, and how it should be interpreted in relationship to God’s intervention in the world. For al-Qaradawi, the February 18 address was a moment to reflect upon what had been learned from the revolution.⁴⁴ It was, he said, an educative revolution (*thawra mu‘allima*), a moment gathering people from all groups and classes. “Rich and poor, educated and uneducated, workers and lettered, Muslims and Christians, men and women, young and old,” all became “one” (*shay’ wāḥid*) aiming at liberating Egypt from injustice (*ẓulm*) and tyranny (*tāghūt*). For al-Qaradawi, this spirit (*ruḥ*) of the revolution, this virtuous link (*ṣila ṭayyiba*) and fraternity (*ukhuwwa*), needed to be preserved by the youth. The Egyptian Revolution had an educative role, and should be remembered as an example of “virtuous behavior (*ḥusn al-sulūk*),” solidarity and sacrifice, full of lessons of guidance and ethics, and “wonders of faith” (*rawā‘i ‘al-īmān*): “This is Egypt when she has faith” (*hadhihi miṣr ḥīna tu‘minu*).⁴⁵

After the formulation of the rule in the fatwa authorizing demonstrations against the unjust ruler, right after the fall of Mubarak, this sermon became the time of reflection and collective introspection about the significance of the revolutionary event. For the interpretation of the revealed law is not only a way to formulate rules to be followed, but enlightens the events of worldly life, and is an invitation to reflect upon what it means to belong to the same community. As in his fatwas, al-Qaradawi’s sermon underlines the practical and collective dimensions of faith exemplified not only in the act of protest against the unjust ruler, but also in relationships between individuals during the revolutionary moment. Here, the relationship to others and to the community in the form of fraternity and sacrifice is made possible by the relationship of the self to God through the mediation of the revealed law. It displays an articulation between interiority and exteriority in the relationship to others, and between morality and action that is constitutive of the Islamic polity.

ORDER, JUSTICE, AND THE SCOPE OF SCHOLARLY DISAGREEMENT

While injustice as related to unfaithfulness was the main lens through which al-Qaradawi declared the lawfulness of demonstrations against President Mubarak, other prominent scholars who did not hold similar views did not try to prove that

the president was just and faithful, but rather relied on another set of arguments. Ali Gom'a, Grand Mufti of the Republic at the time of the protests, underlined that Egyptians did not unanimously support the demonstrations, and that several segments of Egyptian society were worried about their effects on their everyday life. Gom'a's fatwa did not prohibit the demonstrations, but rather authorized Egyptian Muslims not to attend the Friday prayer, which is usually considered mandatory. Gom'a stated that a call for demonstrations right after the Friday prayer is a legitimate reason to fear insecurity and possible violence threatening lives and properties.⁴⁶ Moreover, the demonstrations would stop urban traffic, mobility, and economic activity within Cairo and other cities, and would generate a major loss in a context where the people's main concern is to earn their everyday living. Gom'a's main argument stressed the need to avoid discord and disorder (*fitna*), and underlined the imperative to preserve the community's unity as prescribed in the Qur'an, *Sūrat Āli 'Imrān*, 103 : "And hold firmly to the rope of God all together and do not become divided" (*i'taṣimū bi-ḥabli Allah jamī'an wa lā tafarraquū*).

While Gom'a and al-Qaradawi's fatwas formulated distinct and potentially contradictory prescriptions, they nevertheless shared the assumption that demonstrations may be a legitimate mean of action, depending on the context in which they occur, their demands, and the way they are organized. From this perspective, Gom'a's argumentation was distinct from the kind of arguments relied on by several official scholars in Saudi Arabia⁴⁷ or some Salafi scholars in Egypt.⁴⁸ For the latter, it is the very practice of demonstrations that is unlawful, notably because it is not a practice that the hadith can attest, and is therefore deemed non-Islamic. Gom'a did not prohibit the demonstrations as a general means of action but stressed their effects on the community and its unity. Unlike most Salafi scholars, the jurisprudential method relied on by both al-Qaradawi and Gom'a in their legal opinions does not prohibit a practice merely because it is not mentioned in the Qur'an, or is not attested by the Prophetic practice, or is not explicitly authorized by the Prophet Muhammad's authentic sayings.

Al-Qaradawi and Gom'a share similar scholarly assumptions about Islamic jurisprudence, and both claim to be proponents of the school of the middle ground (*wasatiyya*). For them, the Salafi school remains subjugated to a literal-textual approach (*naṣṣi wa ḥarfī*), relying excessively on the hadiths without taking into account the procedures of rule-production delineated in the sources of jurisprudence (*uṣūl al-fiqh*) or the ultimate and higher goals and objectives of the revealed law (*maqāṣid al-sharī'a*). For the Salafi school, both al-Qaradawi and Gom'a were too lenient as they assert lawful changes brought about by contemporary life that are not part of proper Islamic practices. Yet, al-Qaradawi and Gom'a formulated legal opinions about the 2011 demonstrations that reflected potentially antithetic principles. While al-Qaradawi's fatwa was guided by the principle of justice, to which obedience to the ruler and the preservation of order are subjugated (i.e. the

ruler is legitimate only to the extent that he acts with justice), Gom'a's fatwa was based on the principle of preservation of the community's concord under the existing order.

The tension between the right to stand before injustice and the duty to preserve order as expressed in al-Qaradawi's and Gom'a's fatwas informed many Egyptian Muslims' decision as to whether they should participate in the demonstrations. Islamic jurisprudence does not produce a monolithic and unified ensemble of rules when it is requested to assess new events such as the 2011 uprisings. Rather, the production of Islamic legal knowledge in response to these new events occurs within the space of *ijtihād*, which is the space of probable thought (*ẓannī*) rather than certainty (*qaṭ'ī*) that can be occupied by several scholars with different, if not potentially contradictory, opinions. *Ijtihād* and fatwa formulation carve a space of legitimate disagreement between scholars, which goes along with the space of agreement about the authoritativeness of the Qur'an and the Sunna as the sources of evidence supporting the formulation of legal rules.

As exemplified in al-Qaradawi's and Gom'a's fatwas, the assessment of the nature of a new event requiring the light of Islamic jurisprudence informs the production of legal opinions by Islamic scholars. To a great extent, questions about whether a new event is identical to a previous one that formed the basis of a legal opinion (the precedent) usually guides the Islamic scholar's search. The June 30, 2013, demonstrations against the elected president Morsi and his subsequent ouster generated a legal debate among Islamic scholars similar to the one that occurred at the time of the January and February 2011 demonstrations against President Mubarak. For al-Qaradawi, the 2013 demonstrations were not of the same nature as the 2011 demonstrations and should not have led to Morsi's ouster, as the segment of the Egyptian people who participated in it could not properly act on behalf of the vast majority. Moreover, for al-Qaradawi, President Morsi's deeds did not contravene any of the conditions necessary for the removal of the ruler listed in classical Islamic jurisprudence (committing a great sin, or forcing the people to abandon their religion). In contrast, for Gom'a, Morsi was no longer a legitimate president as his deeds destabilized the country and required his removal.

When comparing Gom'a's and al-Qaradawi's positions about the June 2013 demonstrations with their respective positions in January and February 2011, it appears that the labor of Islamic jurisprudence is less to formulate universal and immutable rules (for example to authorize or prohibit demonstrations against a ruler) than to allow scholars-*mujtahid* to rely on their judgment on a case-by-case basis while using the same sources of evidence offered by the Qur'an and the Sunna and the procedures delineated in the discipline of *uṣūl al-fiqh*. That is the reason why several Islamic scholars may formulate different rules in response to the same case, or why the same Islamic scholar may formulate different rules in response to similar cases over time and space.

Law, Power, and Shari‘a’s Incompleteness

Ever since the revolutions of the eighteenth century, political mobilization and revolutionary upheavals have been associated with the “Law” instituting equal rights and freedoms that still informs the social imaginary of the West. For many European revolutionaries, revolution not only meant the overthrow of the government in place, but entailed also the institution of a new normative regime in line with the society theorized by the philosophers of the contract.¹ The foundational law (with all its affinities with medieval natural law) was not limited to a new political language capturing the aspirations of a category of the population projecting selective “universalism” (“man” and “citizen”) but was also a material force giving shape to new conceptions of individual and collective selves exemplified in the Declaration, the Constitution, and the Code. It is through the colonial projects of the nineteenth and twentieth centuries that the law, as a liberal political language of equal rights and freedoms,² as a normative structure regulating cultural “difference” (and its discriminations), and as a coercive materiality³ started to circulate outside Europe.

As exemplified by the occupation of Cairo’s Tahrir Square (see chapter 1), revolutionary political mobilizations entail the materiality of assembled bodies, generating a force disrupting, and sometimes reversing, the material and coercive manifestations of state power and its control of the public space.⁴ The contemporary power of protesting and assembling bodies targets and yet mirrors the centrality of visible and material bodily politics in modern institutional arrangements (initiated by the Peace of Westphalia) and their theorization by Hobbes, who excluded the “soul” and the attached authority of the Church from the future and the foundational past of the commonwealth.⁵ Representations and institutional

practices associated with modern law that have been shaping state politics in Egypt and other Muslim countries in colonial and postcolonial times inform the contrasting differences between the liberal language of law and representations of shari‘a entailing inner self and dispositions in their relationship to the body.

The occupation of spaces through the assembly of bodies in revolutionary Egypt, and more generally as a form of political mobilization, is better understood when introducing the material and spatial dimensions of state power captured by the intrinsic link between law, sovereignty, and the territorial space,⁶ defining the territorial “domain”⁷ as the material space of state’s *juris-diction*. As contemplated by Hobbes, the constitution of state power dealing with “matter and form” entails a material power whose main finality is to provide order in a given territory through the regulation of bodies (as material entities), their movement and interactions, and to prevent civil war resulting from bodies harming other bodies, for the individual bodies’ self-preservation but also for the collective body politic’s continued existence.⁸ In contrast, shari‘a is not defined by a limited territory, as it addresses selves across territories. However, shari‘a deals with the materiality of bodies to the extent that their deeds—regulated by Islamic jurisprudence—entail beliefs, inner states, and dispositions while connecting the visible world with the unseen world (*ghayb*), and actualizing the revelation captured by its foundational texts.

In this chapter, I am interested in exploring what this distinctiveness of shari‘a (a revealed law regulating bodily deeds in relation to inner selves and the unseen world) means for the relationship between shari‘a and material power in the regulation of the Islamic polity (notably in its caliphal form), and for the understanding of sovereignty in Islamic context. This relationship between shari‘a and the materiality of power, coupled with the socio-discursive conditions of transmission of shari‘a knowledges, enables us to grasp the limited effectiveness of shari‘a and its fragments in the regulation of the Islamic polity in premodern times. However, shari‘a’s incompleteness is not studied here as an anomaly or a failure but as a defining trait of shari‘a in relation to practices attached to material power in classical Islam. The advent of state law, through its displacement of shari‘a in the regulation of bodily deeds overlapping with the Islamic sphere of social interactions and transactions (*m‘uāmalāt*), sheds a new light on shari‘a’s incompleteness in contemporary times but also on shari‘a as both a foundation and a horizon. Projected as a totality through the knowledges attached to it, shari‘a as practice is instantiated in fragments in given times and places.

REVOLUTION, LAW, AND SOVEREIGNTY

As discussed in chapter 1, the 2011 revolutionary event as understood and experienced by Yusuf al-Qaradawi displayed scholarly and ethical practices based on the relationship of faith to justice and centered on the ability of the self to serve the

community, enabled by and subjected to the relationship of the self to God mediated by the revealed law. However, the parallel drawn by al-Qaradawi with other similar events, notably Western liberal revolutions, does not mean that the Egyptian Revolution is their replication. The concept of “revolution,” closely related to the political upheavals and intellectual transformations of the eighteenth century, is associated with the institution of a new legal order. The Western revolutions consisted not only in uprisings against the “ancient regime,” or emancipation from imperial rule, but most importantly, in “a declaration of rights” to be protected through the foundation of a new law, along with new procedures and institutional arrangements for the production of rules. Although the institution of a new law was inspired by natural law, the revolutionaries, particularly in France, understood their own foundational constitutional gesture as a radical change putting an end to the previous legal order. While classical natural law was based on an articulation of internal duties leading to the realization of the good (as in Aquinas’s thought, discussed in chapter 10), modern law as contemplated by jurists and theorists of the state, and instituted by the eighteenth-century revolutions, allows conceptually for an amoral sphere of individual choice and autonomy secured by the state. Hence, in the European narrative, the postrevolutionary modern legal regime does not require the internalization of duties, but only the external imposition of constraints and limitations.

From the perspective of Islamic jurisprudence as understood by al-Qaradawi, the revolution does not mean the institution of a new law in place of the older one, but takes place within a tension between modern law and Islamic jurisprudence, and entails the reenactment of the shari‘a’s meaningfulness and authority. *Ijtihād* performed by al-Qaradawi in his fatwas is the perpetuation of the very act of rule production in Islamic law and jurisprudence. When al-Qaradawi states that President Mubarak does not belong to the faithful, he assumes a relationship between internal states and external deeds in the definition of faith that sheds light on the internalization of duties by the subjects of law. Reaffirming the authority of shari‘a presumes a relationship between the inner and the outer that can be distinguished from the ones assumed by modern law, which rely on the distinction between private and public spheres in which morally virtuous persons are not required for collective life.

In Europe, the question of authorship of the law has notably been discussed in relationship to the emergence of the modern notion of sovereignty and was largely disputed at the time of the conflict between the Church and temporal power. For European political theorists and philosophers (Hobbes or Rousseau), to raise the question “who is the sovereign?” is to answer the question “who is the author of the law?” In the narratives of modernity, the transformation of political regimes consists in the “transfer” of sovereignty and authorship of the law from one entity to another (from the Church to the king, and from the king to the people).

Although, in practice, elected representatives make the law, it is only because they have been chosen and “authorized” to do so by the sovereign people, who remain the source of legitimacy.

In contrast, in the precolonial Islamic polity, the rules organizing the life of the community and regulating social relations and transactions were derived from, or related to, the revealed law, whose author is God. However, shari‘a rules are not immediately available to the community, and need authorized interpreters to be disclosed to the latter. As scholars who are not entrusted with political authority, the main task of the *fuqahā’* is “to extract” the rules from shari‘a’s sources, and never to enforce them. The ruler’s main task is to preserve order and civil peace, and to appoint judges (who are usually scholars) enforcing the rules regulating social relations and transactions. Hence, neither the scholar-jurists, nor the ruler, were ever entrusted with sovereignty understood as the authorship of laws, as in modern Western political theory and practice.

The notion of sovereignty in Europe has a genealogy that may be traced back to medieval theological-political power.⁹ The new status of the law in the European polity and the legislative activity of the people expressing their will does not mean that state law, following the liberal revolutions, was totally severed from its medieval genealogy. The idea of nation was higher than the (positive) law that was its source of legitimacy. In its French version, theorized by Sieyes, the nation occupied the place vacated by the king while reenacting the “absoluteness of regal power.” The nation was a “power absolved from the laws” (captured by the notion of *potestas legibus solute*), because it was the source of both law and power.¹⁰ While tied to its theological genealogy as part of the secular-Christian identity, at least since the eighteenth-century liberal revolutions, sovereignty is no longer understood in Christian theological terms in contemporary political theory and practice. There is only one legal order, produced by the modern state and regulating the people’s life. Citizens may refer to their moral values, and underline the subjective conflict between the moral and the legal, but there are no other laws or supra-legal order (above the constitution) that they can reclaim.

However, contemporary Islamic scholars (as with al-Qaradawi in his fatwa authorizing revolutionary protests) would refer to shari‘a as a supra-legal order that is distinct from modern state law, but that is not necessarily incompatible with the latter. While modern positive law is constitutive of the state, the revealed law does not address the state as such, but individuals as well as the community of faith, and is constitutive of the latter. However, it is expected that political rulers, as individuals who have the power to organize the community’s life, should submit to the revealed law interpreted by Islamic scholars.

While the question of sovereignty is relevant to better understand contemporary Islamic representations of the relationship between law and power, it is also related to the question of ethics. For the liberal-Kantian self-legislating subject in

the moral domain is homologous to the self-legislating citizen à la Rousseau in politics. Although Kant’s conception of political power has been relatively marginal in his overall thought when compared to Rousseau’s, they both offer a structural relationship between the sovereign moral subject and the sovereign juridical-political subject that have shaped the way we understand and live modern-liberal politics. The law attached to the eighteenth century’s revolutions is the foundational act of the free and autonomous will. Either in the form of a contract between each atomized individual and the state (Hobbes), or as a holistic “general will” co-constituted by, and yet above, individual wills (Rousseau), or as an assemblage of free wills able to think and interact through the universalization principle (Kant), the collective will enunciates the original law, which is the law of the will. Through the legislative activity produced by the assemblies (of wills), it is this primal moment that is reenacted.

In Islam, shari‘a is already given as part of the revelation, but is not necessarily known by the community of believers. Shari‘a rules are not self-evident and require decipherment by scholars who are part of a diachronic community of knowledge sharing a set of assumptions about the truth and authority of revealed speech. The scholar’s will (and that of the community of believers as well) doesn’t have a status in the production of rules, because shari‘a is not about what humans want but about deciphering God’s prescriptions transmitted through the prophecy. However, the work of the will is not absent from the understanding and practice of shari‘a by Muslims. While the individual and collective subjects’ will has no role in the formulation of shari‘a rules, the believer is nevertheless expected to will shari‘a and its rules rather than merely implementing them. Intent shapes the inner self for each deed prescribed by shari‘a, and it is in this relationship between intent and deed that the will is involved in the grasping, appropriation, and implementation of shari‘a rules. In contrast, in contemporary polities (represented notably by Rousseau, Kant and more recently Habermas), the law is obeyed because the production of the law is an act of freedom and will, and it is expected that the citizen will obey the law that she has prescribed to herself.

SHARI‘A AND (IL-)LEGITIMATE POWER

The relationship between power and shari‘a, predicated upon the question of the ruler’s qualifications and legitimacy, was at the heart of the conflict between the Sunni and the Shia in early and classical Islam, and was addressed in works of Sunni *kalām* and of Shi‘i jurisprudence in the fourth century onward. This question can be formulated as: to what extent is the fulfillment of all qualifications for the ruler to be deemed legitimate a precondition for the regulation of the polity by shari‘a? Or put in another way, to what extent can an illegitimate power (the usurper) acquire a minimal legitimacy through the implementation of shari‘a? For

the Sunni, a ruler who is not fully qualified for the position can be accommodated in part to avoid sedition and chaos (*fitna*) as long as there is room even for shari‘a’s limited implementation. They also expected that shari‘a can contain a ruler’s excesses, and that scholars would correct his ignorance if he lacked the required moral and scholarly qualifications. In contrast, for the early Shia, shari‘a cannot be truly known and authentically implemented in the absence of the legitimate ruler-imam. In the true imamic polity, shari‘a, while regulating the polity, doesn’t serve as a check of power, as the imam is infallible.

Hence, in early Islam the status of power was not settled through the still emerging discipline of (and commitment to) jurisprudence. There was a prior question about the legitimacy of the ruling authority involving beliefs and theological matters. It is clear that the regulation of the Islamic community by jurisprudence is linked to the rise of scholars as a distinct group, the formation of juridical schools (*madhāhib*), and the constitution of jurisprudence as a discipline (*fiqh*). Yet, the growing importance of jurisprudence (with its various schools) in the regulation of the community in the first centuries of Islam was concomitant to foundational divisions over the legitimacy and nature of ruling power informed by distinct interpretations of the criteria required for leading the Islamic community following the death of the Prophet Muhammad, and by broader disagreements about beliefs and the relationship between knowledge, power and justice captured in subsequent works of *kalām* of the fourth century of Islam onward.

The criteria for holding power and leading the community were associated with the notion of the imamate (*imāma*) related to the function of imam in leading the collective prayer and the overall guidance of believers. It was discussed in the works of (Sunni) *kalām* in the last section, distinct from the sections dealing with God’s attributes, the prophecy, the universe and the nature of human deeds. In Abd al-Jabbar’s *al-Kitāb al-Mughnī fī Abwāb al-Tawhīd wa al-‘Adl*, one of the earliest *kalām* treatises, questions related to the status of the imam, his qualifications, and the rule of the first caliphs who succeeded the Prophet Muhammad were discussed extensively, notably in response to Shi‘i views on the imamate. In Ghazali’s *al-Iqtisād fī al-I‘tiqād*, the imamate is considered a matter of both beliefs (*mu‘taqadāt*) and jurisprudence (*fihiyyāt*), as it engages differences between distinct Islamic communities, notably between Sunni and Shia regarding who should have been holding power since the death of the Prophet Muhammad, but also legal requirements and obligations to fulfill the imam’s position.

Sunni works of *kalām* (Juwaini’s *Kitāb al-Irshād ilā Qawāṭi‘ al-Adilla fī Uṣūl al-I‘tiqād* or Ghazali’s *al-Iqtisād fī al-I‘tiqād*) refuted the Shi‘i claim that Ali was designated as the Prophet Muhammad’s successor. They do so on the grounds that the Shia do not rely on proper knowledge in substantiating their claim, as they quote a *khabar wāḥid* rather than a widely transmitted saying whose certainty is established (*naṣṣ manqūl ‘alā al-tawātur*). Whatever the truth of these claims, the impor-

tant fact is that the dispute was settled when Omar Ibn al-Khattab was instituted as the legitimate caliph following a formal allegiance (*bay‘a*). For Sunni scholars, there is no doubt that the first three caliphs preceding Ali fulfilled all the qualifications for the imam’s position, and should not be cursed or contested as the Shia do.

From a Sunni perspective, the claim that the imamate of the epoch is not a real one, if taken literally and acted upon, would have incalculable consequences on the regulation of the polity. This would mean that all the community’s members would live in a state of unlawfulness (*ḥarām*), as those in authority would not be qualified, key functions would not be fulfilled, and activities requiring judgeship such as transactions and marriage would no longer be enacted. Hence, a ruler who is not fulfilling all the required conditions for the imamate should be maintained if his removal by a more qualified person would cause unrest and disorder (*fitna*) harming the integrity and safety of the community.

In contrast, the original Shi‘i conception of power,¹¹ derived from what was lived as the foundational injustice of illegitimate succession at the head of the Islamic community following the death of the Prophet Muhammad, rejected the existing authorities that were in place in the early centuries of Islam. As captured by the earliest Shi‘i books of jurisprudence and collection of the imams’ sayings (hadith), the Shia grounded power on the (polysemous) notion of *walāya* (also common in Sufism in reference to spiritual masters), that is, the personal and embodied proximity to the divine instantiated in the genealogical proximity and allegiance to, and love for, Ali and the house of the Prophet Muhammad (*āl al-bayt*).

Unlike the ruler in the Sunni tradition, who should be selected by “those who loose and bind” (*ahl al-ḥall wa al-‘aqd*), the designation of the imam, for the Shia, can never be the mere choice of the community, or the result of any other human process, but is rather God’s gift and light, and the pillar of earth (*rukṇ al-arḍ*), as stated in the earliest collections of Shi‘i hadith.¹² The imam is the *ḥujja*, that is, the manifest evidence of God required by humans to know the divine message. Among the exceptional beings mediating between God and His creatures, the imam is distinguished from the messenger (*rasūl*) and the prophet (*nabī*) on the basis of the faculties available to him when interacting with the unseen and limited, for him, to the ability to hear the angels’ speech without seeing them.¹³ In other hadiths, the imams share the prophets’ standing (*al-imāma hiyya manzilatu al-anbiyā’*).¹⁴ Like the messenger and the prophet, the imam is endowed with wisdom (*ḥikma*) necessary to guide humans in the differentiation between the lawful (*ḥalāl*) and the unlawful (*ḥarām*).

The imam is an integral part and a continuation of the revelation. He is the completion and perfection of religion (in reference to *Sūrat al-Mā’ida*, 3: “*al-yawm akmaltu lakum dīnakum*” [Today, I have perfected your religion for you]).¹⁵ This is mirrored in the order of chapters in the early Shi‘i collections of hadith and books of jurisprudence, where the centrality and priority of the imamate over all other

components of Islam is dealt with in the first sections, prior to the acts of worship, as it entails not only knowledge of and belief in the imamate as pictured in the Shi'i narrative, but requires an intimate embracing of the imam of the time, previous imams, and the house of the Prophet. Hence, faith in God and the Prophet Muhammad involves knowledge of and faith in Ali and the whole chain of imams. By contrast, denying or being hostile to them is a form of unbelief.¹⁶

In the early Shi'i conception of the polity, given the nature of imamic authority, the law is grasped, lived, and implemented through the imam, notably the acts of worship (prayer, fasting, almsgiving, pilgrimage) and criminal punishments, as the imam "makes lawful what has been made lawful by God" (*yahullu ḥalāl Allah*) and "prohibits what God has proscribed" (*yuharrimu ḥarām Allah*).¹⁷ While for the Sunni the knowledge of the law is attached to the scholars (*fuqahā*'), and its implementation for regulative purposes left to the ruler, the law, for the Shia, is both known through and implementable by the imam. Therefore, the transmitted sources of jurisprudential knowledge are considered valid only to the extent that they have been reported through the chain of imams (and not through the companions of the Prophet Muhammad relied on by the Sunni, who are deeply distrusted) as collected in the four foundational books of the Shia.

The imam's knowledge is not limited to the textuality of the Qur'an and the commitment to the inherited sayings of the previous imams, but includes the knowledge of that which is beyond the apparent and manifest meaning of revealed speech, as everything that has been "sent down" (*tanzīl*) has a corresponding primordial meaning (*ta'wīl*).¹⁸ In addition, the imam knows all the revealed knowledges given to angels, prophets, and messengers, and the transmitted books such as the Torah and the Gospel, in all their languages. The only thing that the imam doesn't know is the unseen (*ghayb*), but even that knowledge can be revealed to him by God if the imam wishes so.¹⁹

For most of Shi'i history this conception of imamic authority prevailed in places where the Shia lived under Sunni rule, including following the occultation (*ghayba*) of the imam of the time that accentuated the contrast between the unjust existing ruler and the absent legitimate guide. The Shi'i community was then instructed by the past imams to continue performing jurisprudential acts (*fiqh*) partially under the authority of the apparent imam (*imām al-zāhir*) while preserving true allegiance to the hidden imam and "waiting for the government of truth and justice" (*muntazirīn li-dawlat al-ḥaqq*).²⁰ In polities without an imam (that is, during the occultation period), the key four jurisprudential (collective) rules (*al-aḥkām al-arba'a*) that include the Friday and Eid prayers, criminal punishments, the collection of taxes (*khums* and *kharāj*), or the declaration of (offensive) jihad are suspended.

This distinct conception of power and its implications for shari'a were revisited when Shi'i dynasties ruled their own territories, notably under the Fatimid and

the Safavid where the scholar-jurists (*fuqahā’*), in a way very similar to the Sunni, prevailed in the production of shari‘a knowledge regulating the polity in the here and now. An important formulation of this shift was done by Muhaqqiq al-Karaki, a major scholarly figure of the early Safavid rule²¹ who empowered the *faqīh mujtahid* to be the representative (*nā’ib*) of the imam in his absence, and the supreme scholarly authority during the occultation period (*ḥāl al-ghayba*) whose rulings should be followed by believers (*fa-yajibū al-taḥākum ilayhi wa al-inqiyād ilā ḥukmihi*).²² Al-Karaki himself, who was given the title of the imam’s representative (*nā’ib al-imām*) by the Safavid, authorized the collection of land tax by governors appointed by the ruler, and rendered the performance of the Friday prayer an obligation in the absence of the imam provided that his representative is present.²³

MATERIAL POWER AND NORMATIVE AUTHORITY IN EARLY AND CLASSICAL ISLAM

In early Islam, legislative sovereignty was not attached to the ruler’s will. However, the ruler was bestowed with the power to enforce shari‘a rules and to make rules and decisions needed to administer the polity. In Sunni Islam, it is through advice that court secretaries delineated the ruler’s powers and functions in the polity of the early second century. In a genre echoing the “mirrors for princes” and reflecting the centrality of the caliph at a time when the community of shari‘a scholars was still in the making,²⁴ Ibn al-Muqaffa’s *Risāla fī al-Ṣaḥāba* depicts the art of government through the ruler’s lens in which jurisprudence is not (yet) constituted as an autonomous corpus of knowledge attached to the jurists. The caliph has latitude to make decisions in all areas relevant to the administration of the populations under his authority (conducting war, appointment of governors and other officials, and so on). He is expected to implement punishments prescribed by Islamic jurisprudence but also to exercise jurisprudential authority and decide on cases where there is no precedent, a prerogative that would subsequently become the domain of scholars authorized to exert *ijtihād*. However, the caliph’s authority over the Muslim community is conditional on his own upholding of key shari‘a rules, as “there can be no obedience to a creature disobeying the Creator” (in reference to a saying that would later be authenticated as uttered by the Prophet Muhammad). These key rules include, for Ibn al-Muqaffa, the regulation of worship (daily prayers, almsgiving, fasting the month of Ramadan, and pilgrimage to Mecca), as well as the application of punishments.

Hence, while in Ibn al-Muqaffa’s *Risāla fī al-Ṣaḥāba* the ruler-imam of the community is assigned a central role in the Islamic polity and can lead the formulation of rules related to the organization of collective life and the administration of people and things, he doesn’t have the authority to formulate, change, or undermine rules regulating obligations (*farā’id*). These are known as self-evident truth

whose certainty is inscribed in textuality and the community's transmitted knowledge about right practices. Yet, writing in the early second century of Islam under the Abbasid era, Ibn al-Muqaffa' advises the caliph to centralize the formulation of jurisprudential rules and decide which norm should prevail as a response to the multiplicity of normative centers and possible divergence of rules in different territories of the Islamic empire. In the *Risāla fī al-Ṣaḥāba*, the "people of knowledge" whose advice can enlighten the population, prevent sedition, and identify blamable practices are effective only to the extent that they are themselves acting in accordance with the caliph's moral guidance and decisions regarding jurisprudence.

With the development of jurisprudential knowledge in the second and third centuries of Islam, and the constitution of a distinct epistemic community, the Islamic polity in Sunni Islam became increasingly structured around the scholars as authorized transmitters and interpreters of shari'a knowledge. The constitution of a corpus of jurisprudential knowledge requiring specific expertise acquired through a formal education and recognized by peers redefined and circumscribed the jurisprudential role of the caliph along the lines of the hierarchy of norms defined by their degree of certainty (which is itself inscribed in the degree of certainty of revealed speech captured by textuality), and their object (worship, social interactions, administration). Within this epistemic regime, scholars were the depositories of knowledge and the ruler had a circumscribed authority in defining the norms regulating collective life. Yet, while the caliph could claim symbolic affiliation and continuity with the prophetic and post-prophetic caliphal rule, he (and increasingly those effectively running the administration and the army) embodied the material power needed to implement judgments and enforce punishments.

The formulation by the power-holder of rules and decisions needed to administer the polity became known as lawful politics, or *siyāsa shar'iyya*. In the eponymous book, Ibn Taymiyya enumerates the areas and conditions under which this sphere of jurisprudence can be deemed in conformity with shari'a.²⁵ As exemplified in Ibn Taymiyya's writings, material power is regarded with ambivalence by Islamic scholars. Three set of arguments are used by Ibn Taymiyya to situate power in relation to shari'a. First, the exercise of power is "a religious obligation," needed to fulfill religion and uphold shari'a. The Islamic tenet "commanding right and forbidding wrong" (*al-amr bi-l-ma'rūf wa al-nahy 'ani al-munkar*) requires "commandment" (*imāra*) and "force" (*quwwa*).²⁶ Just politics is predicated upon equitable decisions and actualization of duties, and requires the knowledge of justice (as manifested in revealed speech). Second, material power, regardless of the ruler's piety, moral virtues, and sense of justice, is a practical necessity needed to preserve order and prevent chaos. "Experience" attests that the saying "sixty years under an unjust ruler are better than one night without a ruler" is wiser to pursue. Given that humans cannot accomplish their telos and "deal with their affairs" without collective life enabling their interactions, worldly life cannot be fulfilled without the exer-

cise of power. Third, those eligible for princely functions should not be seeking positions, and power-holders should not be driven by worldly appetites (enjoyment of the power to command and money). Rather, they should have pure intent and be guided by the afterlife and the proximity to God when exercising authority.

With Mawardi’s *al-Aḥkām al-Sulṭāniyya*,²⁷ the sphere of “governmental ordinances” is constituted as a *sui generis* area of expertise requiring dedicated scholarly effort to advise the ruler on the basis of the knowledge constituted by scholars of jurisprudence, as governmental rules were previously “mixed with all [other jurisprudential] rules” (*imtizājihā bi-jamī‘ al-aḥkām*). Distinct from classical works of jurisprudence dealing either with the generative principles (*uṣūl al-fiqh*), or with the different branches (*furū‘*) regulating the acts of worship, social relations, contracts, and addressing primarily individual selves, *al-Aḥkām al-Sulṭāniyya* is structured around the exercise of power, and yet is informed by Islamic jurisprudence. It defines the legitimacy, criteria, and procedures for fulfilling key positions and functions related to the administration of populations and territories, the collection of taxes, the exercise of force, and administration of punishments, as well as the requirements for the exercise of “religious responsibilities” (*al-wilāyāt al-dīniyya*) regulating collective life. In *al-Aḥkām al-Sulṭāniyya*, power is not only meant to provide order and settle disputes as defined by reason. In addition to the administration of worldly matters (*siyāsāt al-dunyā*), power is mandated by the revealed law (*shar‘*), to protect religion and uphold this very law.

POLITICS OF THE SELF AND WORLDLY GOVERNMENT

While upholding shari‘a rules is constitutive of the Islamic polity, Islamic government requires a knowledge of both statecraft and how to handle the soul. For Mawardi, the power-holder is qualified and equipped to rule the community to the extent that he has been able to “govern his own self” (*siyāsati nafsihi*).²⁸ Obedience from the subjects cannot be requested if the ruler’s self has not been domesticated. As mentioned in the Qur’an, *Sūrat Yusuf*, 53, the self is a matter of suspicion, constantly prone to evil (*inna al-naḥsa la-amāratun bi-l-sū‘*). A prince can succumb to flattery from sycophants if no one in his entourage is able to tell the truth and provide advice (*naṣiḥa*) balancing the arrogance and self-satisfaction that come naturally with the exercise of power. The ruler should fear the tyranny of his mere opinion, and on all matters should consult those who have the relevant knowledge and experience. The ability to establish some distance from one’s own self, to question it (*muḥāsabat al-naḥs*), and to discipline its excesses, desires, and appetites should be cultivated. The self should never be passive and the victim of its own emotions, but should rather channel those excesses (for example anger) into the measured expressions of character (inspiring notably authority and reverence) needed to rule the community. The king’s behavior is exemplary for

his subjects only to the extent that he says what he does and he does what he says, that he is obeying the rules that he is expected to uphold, and that he is reflecting on his own self and deeds.

While the inner dispositions and virtues should be cultivated by the prince to rule the community, they cannot be effective without a proper knowledge of the art of government over a kingly dominion (*siyāsat al-mulk*). When dealing with the principles of government (*qawā'id al-mulk*),²⁹ Mawardi acknowledges that wealth, force, and religion can each be the foundation of power (*ta'sīs*). Religion is, however, the soundest and most lasting basis for the continuity of the dominion on the condition that the king is serving religion (through the cultivation of inner dispositions) rather than religion being used by the king to serve his appetites and worldly interests. Political authority was entrusted by God (*amānat Allah*)³⁰ to the ruler, who is accountable before Him. Religion (*dīn*) should be protected and upheld by the power-holder, and should be the basis of his rule, as its guidance makes the worldly life (*dunyā*) good. Religion is effective in addressing the individual self as it "heals the secrets of the hearts" (*yuṣliḥu sarā'ir al-qulūb*)³¹ and prevents the self from wrongdoing and from succumbing to its appetites. In relation to collective life, religion enjoins friendliness among the community's members, settles divisions, and brings unity to the collectivity where reason alone fails to hold together the strong and the weak, the noble and the humble.

Following the foundation of a kingdom, the art of government entails dealing with four main areas: organizing the settlement of land, protecting subjects, administering troops, and securing financial resources. Among his obligations toward his subjects, the ruler is required to urge them to fulfill shari'a obligations in their acts of worship and social interactions, and to implement criminal punishments. The ruler should also facilitate the settlement of his subjects, secure their properties and their access to water, and settle their disputes. In addition, the principles of just government (*al-siyāsa al-'ādila*) entail a general atmosphere of concord (*ulfa*) in which the subjects obey the prince, who is expected to accept and listen to advice (*naṣiḥa*).³²

If shari'a offers the foundation of and an overarching normative guidance to the Islamic polity, power and dominion require a specific understanding of their logic. Power involves domestication and mastery (*sāsa*) enabled by force (*quwwa*) protecting and preserving the dominion, discernment (*ra'y*) to organize and manage the community, and stratagems (*makida*) to handle and fight enemies. Power is mainly relational, based on an interaction between ruler and subjects, between ruler and subordinates, between ruler and enemies. Yet its materiality does not suffice to produce desired results, as force needs judgment and ruse, particularly in the relation between the ruler and his subjects that should be guided by consent. While material force is part of power, the former should itself be domesticated and regulated by the overlapping rules of jurisprudence (*fiqh*) and rules of government

(*qawānīn al-siyāsa*). Hence, when Mawardi recalls that the collection of taxes should be done according to what Islamic jurisprudence prescribes, he stresses that any undue amount will trigger the people’s hostility and “can be extracted only if political authority inflicts violence that is outside the rules of government” (*bad-lihi illa bi-l-‘unf al-khārij ‘an qawānīn al-siyāsa*).³³

SHARI‘A’S ELUSIVE PRESENCE

The scope and effectiveness of shari‘a in the regulation of the Islamic polity is not given, and may change over time and space as contemplated by Islamic scholars themselves. Mawardi and Ibn Taymiyya discussed the jurisprudential rules regulating the Islamic polity, notably the selection and duties of the ruler-imam, delegation of authority, and the regulation of governmental decision. Ibn Khaldun assessed shari‘a’s historical effectiveness in collective life through the performance of religious functions and the role of jurists in polities where the caliphate became a mere title. And Juwayni also tackled the meaning and relevance of shari‘a in polities without a central authority, and without Islamic scholars.

In the absence of an imam-ruler understood as the one who knows the rules of government (*masālik al-siyāsa*), but also in the presence of a non-scholarly qualified ruler, Juwayni³⁴ prescribes that the most competent scholar, the “scholar of the time” (‘*ālim al-zamān*) should lead the Islamic polity as scholars, in the absence of prophets, are the heirs of shari‘a (*al-‘ulamā’ warathatu al-sharī‘a*).³⁵ This particular scholar would be the highest *mujtahid*, able to deal comprehensively with the textual sources of shari‘a and formulate rules in relation to new cases and events independently from other scholars. The people (*al-nās*) are not authorized to be in charge by themselves, but need the guidance of those known for their knowledge in their era. This arrangement may take place not only in the polity remaining unified, but also in the absence of single authority and where territorial fragmentation prevails, as the local community’s members can select the most knowledgeable scholar among them to perform functions and settle the disputes previously handled by the imam-ruler or his governors and delegates. If a man without the required jurisprudential knowledge rises to power with a significant number of troops and followers, he is the one to whom governmental, financial, and military functions should be delegated, but he is not authorized to decide on any matter without consulting the scholars of his time and place.³⁶

Another possibility contemplated by Juwayni is the absence of the most knowledgeable scholars able to deal independently with shari‘a knowledges (*mujtahid mustaqqil*, also referred to as *mustaqillūna bihā*) in a context of withdrawing shari‘a (*indirās al-sharī‘a*), with a decline in the number of transmitters of the knowledges attached to the past jurisprudential schools but where “scholarly assemblies are still gathering” (*ma‘a baqā’ majāmi‘ al-shar’*) and “all the pillars of

religion are still preserved among Muslims" (*wa arkān al-dīn 'alā al-jumla bayna al-muslimīn*).³⁷ In this situation, the community can be guided by the scholar-transmitter (*faqīh-nāqil*) whose skills are not limited to memorization and transmission of past knowledge but entail the independent grasping and comprehending (*istiqlāl bi-l-dirāya*) of the discipline of jurisprudence and its subtleties (*marmūq fī al-fiqh*). This scholar should be able to deal with new cases and events, and to provide an answer to any questioner (*mustaftīn*) seeking for guidance through a comprehensive view of his jurisprudential school (*madhhab*). Here, the scholar is not a mere transmitter. Rather, he is a jurist, mastering the content of the transmitted texts of a jurisprudential school (*mustaqil bi-naql al-madhhab*) and acting as a guide who can navigate these texts for questioners, and more generally the community.

In other words, the jurist-transmitter should be able to formulate rules in relation to new cases and events in response to what is needed by the people of the time (*lā 'iq bi-hājat ahl al-zamān*), that is, to practice *ijtihād* without having all the knowledges and skills necessary to be formally recognized as a *mujtahid*. This analogical juridical reasoning relates the non-textual to the textual, and more accurately relates the case that is non-existent in shari'a's textual knowledge (*ghayr al-manşūş 'alayhi fī al-shar'*) to similar cases mentioned in the same textual knowledge (*al-manşūş 'alayhi*) available and put in order in books of jurisprudence.³⁸

It is through the relationship between the self and shari'a, through the question raised by the Muslim in relation to a new event, situation, dilemma (*what should I do?*) that shari'a is alive. In a polity where there are no scholars (including transmitters) at all, the question of shari'a's relevance actually starts with the self's request to be guided and her search for an answer, starting with the principles and rules of religion (*aḥkām al-dīn*). For Juwayni, such a context entails dealing with shari'a holistically, through its foundation and generative principles (*amr kullīyyan fī qawā'id al-sharī'a*).³⁹ This requires the ability to relate the infinite to the finite, that is the infinite flow of events in the self's life to shari'a's finite sources (*fa kayfa yashtamilu mā yatanāhā 'alā mā lā yatanāhā*).⁴⁰ This requires also a work of hierarchization of shari'a rules according to their importance and occurrence in Muslims' lives, to which Juwayni devotes the third part of *Ghiyāth al-Umam*. The most important rules (mainly the acts of worship, marriage, contractual activities, and punishments), and the generative holistic principles (*qawā'id kullīyya*), can be grasped through a review of the jurisprudential schools, enabling the easiest way to perform duties rather than attention to details. For example, a number of situations invalidating the act of prayer are suspended as it is not possible to deal with detailed prescriptions in the absence of scholars enlightening the community on those details. Prescriptions that have been formulated on the basis of probable thinking (*ẓanni*) should not be retained, as only rules reached through certainty are the common denominator and should be kept.

The only situation where shari‘a would be completely withdrawn (*inṭiwā’ al-shari‘a*) would be in places where shari‘a knowledges have been lost among almost amnesiac communities. In such territories, there would be no relevance for the distinction between the lawful and the unlawful, as if the divine message had never reached them. Hence, as long as books dealing with shari‘a are available, and as long as individuals and communities are able to know shari‘a through books (such as Juwayni’s own book) in the total absence of scholars, shari‘a remains alive through the people’s desire, requesting and addressing it (*raghbat al-nās ‘an ṭalabihā*).

SHARI‘A’S LIMITED EFFECTIVENESS IN THE REGULATION OF THE ISLAMIC POLITY

As theorized by Ibn Khaldun, the relationship between law, power, and effectiveness revolves around shari‘a as both a foundation and a horizon of the Islamic polity, but also a set of rules containing the exercise of power. Yet, while Ibn Khaldun differentiates between unchecked (natural) power and power subjected to rules, and between rules formulated on the basis of rationality and practice (dealing only with the worldly life) and those derived from a revealed law (attached to both the hereafter and the worldly life), he is skeptical as to the shari‘a rules’ effectiveness in the regulation of the Islamic polity.

The limited effectiveness of Islamic jurisprudence is better understood when introducing Ibn Khaldun’s analysis of power. There is an autonomous logic of power, distinct from and yet related to the question of its legitimacy, recognized by Ibn Khaldun. Power is acknowledged as a material fact, manifested through constraint and force. For Ibn Khaldun, there is a bestiality of unrestricted, “natural” power (*mulk ṭabī‘ī*), as the power-holder does not act in accordance with what the law would have prescribed, but rather follows his will and desires, his appetite and selfishness, causing disorder and killings. Hence, power cannot be left to the ruler’s will but needs to be regulated by the law.

The field of politics, and more precisely the art of government, has its own rules (*qawānīn siyāsiyya*), as society cannot survive without the preservation of goods enabled by power, which can be Islamic (the caliphate), or non-Islamic. In contradistinction to brute power, checked power is regulated by either rules set by the wise and statesmen (politics guided only by rationality), or by rules prescribed by God through a legislator (*shāri‘*) and taking the form of a revealed law by which revelation guide both worldly life and the hereafter.

Politics guided by religion introduces the meaning and temporality of the hereafter, as it does not deal only with worldly matters. Without religion, worldly life is a game, a vanity without purpose met by death and nothingness. In *Sūrat al-Mu‘minīn*, 115, “have We created you without purpose?” the revelation explicitly

reminds humans that there is a religion leading to happiness in the hereafter. Revealed laws (*sharāʿi*) came with obligations in both “worship and social interactions” to guide power on the path of religion (*manhaj al-dīn*) and to have all matters regulated by the Legislator.

The relationship between the seen and the unseen, the known and the unknown, is at the heart of politics regulated by the revealed law. The art of government and rules of politics (*aḥkām al-siyāsa*) deal only with what is visible and apparent (in reference to *Sūrat al-Rūm*, 67, “They see only appearances in the worldly life”). Politics based on a rational perspective (*al-naẓar al-ʿaqlī*) seeks to achieve worldly goods. But politics relying on the revealed law’s perspective (*al-naẓar al-sharʿī*), also referred to by Ibn Khaldun as the caliphate, subjects the worldly goods to the hereafter’s, by which the ruler is mandated to protect religion, and manage worldly matters on the basis of the latter (*ḥirāsat al-dīn wa siyāsat al-dunyā bihi*).⁴¹

And yet power, including religiously legitimate power such as the caliphate, cannot be durable and exercised without the social structure, that is the cohesiveness of a group or *ʿaṣabiyya* sustaining it. While Ibn Khaldun refers to the jurisprudential criteria for the exercise of caliphal power, he doesn’t rule out, like Juwayni and Mawardi, the possibility for an usurper to be the real power-holder, provided that he acts according to religion, justice, and principles of good government and maintains a formal allegiance to the caliph. Ibn Khaldun doesn’t think that the caliph needs to descend from the Quraysh tribe (a condition discussed in jurisprudential treatises in reference to the Prophet Muhammad’s and subsequent caliphs’ tribe) but underlines that what matters is not this specific lineage but the caliph’s belonging to a strong sense of cohesion (*ʿaṣabiyya*) enabling the community to be united against external threats and internal divisions.

Most important, for Ibn Khaldun, the caliphate, understood as both a power subjecting the goods of the worldly life to the goods of the hereafter and a unified command over all Islamic territories, is no longer a political reality. The caliphate has been transformed into mere power and kingship (*mulk*), and the Islamic territories are fragmented into several nations (*aqṭār*), each with its own ruling group and *ʿaṣabiyya*. Unlike those (the Khawarij and certain Muʿtazila) asserting that obedience to shariʿa rules doesn’t require an imam-ruler, Ibn Khaldun stresses that even in the case where there is no imam, force and puissance (*shawka*) and the *ʿaṣabiyya* sustaining the implementation of rules are still required, thus shifting the discussion to the relation between coercion and shariʿa rules rather than the caliphate per se.

Shariʿa’s effectiveness in regulating the polity should be assessed taking into consideration human nature shaping the socio-historical reality of power through the *ʿaṣabiyya*. Here lies the paradox of shariʿa in relation to the material actuality enabling it to be effective. As opposed to blood relations and “the arrogance of birth” (upon which the *ʿaṣabiyya* is based), shariʿa rules came as a message addressing all “Adam’s sons” (rather than a particular group), to guide individual

and collective deeds on the basis of divine prescriptions. And yet, shari‘a cannot regulate the polity and protect it against external threats without the force of ‘aṣabiyya. But when a strong, undomesticated ‘aṣabiyya prevails, the accumulation of wealth, worldly pleasures, and domination become the end of power and strip the caliphate of its otherworldly dimension, while keeping only its name. Therefore, while shari‘a condemns certain deeds, it is not meant to ignore or suppress them or the faculties enabling them. Rather, shari‘a orients desires and natural inclinations (such as the ‘aṣabiyya) toward the lawful, that is, the good.

Besides the overall material conditions related to the ‘aṣabiyya and the exercise of power, shari‘a’s effectiveness is also assessed in the *Muqaddima* in relation to the distinctiveness of the Islamic polity grasped through the specifically religious functions (*al-wilāyāt al-dīniyya*) of the caliphate, notably the guidance of prayer (*imāmat al-ṣalāt*), the issuance of fatwas, and judgeship. For Ibn Khaldun, leading the prayer is the highest of all functions, even higher than the exercise of power. It was initially performed by the first caliphs themselves, and then increasingly delegated to their representatives. The issuance of fatwas requires some kind of endorsement of the most qualified scholars by the central power to protect people from following rules enunciated by impostors and the least qualified. The settling of disputes should prevent the community from falling prey to divisions and dissensions through the twin nature of judgeship that is both a promise of justice and a coercive power (*wazīfa mumtazija min saṭwat al-sulṭana wa niṣfat al-qaḍā’*), administering punishments actually exercised by the central authority rather than the judge himself.⁴²

The limited place of religious functions and the limited application of shari‘a rules in the regulation of the Islamic polity is indicated by the actual role of scholars in the government. Religious functions have lost prestige as their holders have been weakened by the comfort of urban life. Scholars were previously treated with regard and consulted by the political authority (*dawla*) when the latter was structured around religion and the implementation of shari‘a rules (*qiyāmihā bi-l-milla wa akhdhihā bi-aḥkām al-shari‘a*), but they were never decision makers. Scholars had a formal presence in royal councils, but they never had either the material power to be considered effectively *ahl al-ḥall wa al-‘aqd* (“those who loosen and bind”), empowered to choose or depose the ruler. More generally, scholars do not have a role in governmental matters because power is effective when it rules “following the nature of civilization” (*ḥukm al-mulk wa al-sulṭān innamā yajrī ‘alā mā taqtaḍihi ṭabī‘at al-‘umrān wa illā kāna ba‘īdan ‘ani al-siyāsa*). That is, a functioning government requires an organic link to a powerful group (‘aṣabiyya) that scholars are precisely lacking. Rather, scholars should request the protection of the powerful to have their views taken into account in relation to governmental matters.

Unlike the sphere of governmental affairs requiring affiliation with a powerful group and a specific knowledge of its conditions and principles (*aḥwālhā wa*

aḥkāmḥā), Ibn Khaldun acknowledges the role of scholars for individuals and communities to the extent that the latter need prescriptions regulating acts of worship and social interactions. However, Ibn Khaldun stresses that there are only a few scholars combining knowledge and piety who can claim to be the true “heirs of the prophets” (*warathatu al-anbiyāʾ*) and “shariʿa holders” (*ḥāmili al-shariʿa*), as the majority of jurists are “just enunciating words about how to perform deeds” without piety in an era where shariʿa rules are applied to a limited extent and in few circumstances.⁴³

SHARIʿA’S INCOMPLETENESS AND LIMITED EFFECTIVENESS UNDER A NEW LIGHT

The rise of Arab nationalism in Muslim territories under European colonial rule, coupled with the shift from imperial Ottoman thought to Turkish nationalism, inaugurated new representations about the polity in Muslim countries, and a political language revolving around the nation-state as a new form of government.⁴⁴ The circulation of modern concepts of politics and religion informed retrospective interpretations of Islamic history by which the distinction between what is “political” and what is “religious” in Islam became one of the doctrinal justifications of the disappearance of old forms of government and the adoption of new ones. Ali Abderrazik’s *Islam and the Foundations of Government* was one of the first works of political secularism from an Islamic perspective, addressing mainly those who were seeking to revive the caliphate following its abolition in 1924 by the Turkish National Assembly at the initiative of Mustafa Kemal. It exemplifies this new political language mirroring practices of the elite participating in colonial institutions, and echoing debates from the end of the nineteenth century about the status of reason and faith in relation to knowledge (see chapter 15). Initially interested in situating shariʿa judgeship in relation to the origins of “the Islamic government,” Abderrazik, who was an Islamic scholar and a shariʿa judge, shifted his attention to the caliphate, understood as the authority over both religion and worldly matters (*riʾāsat al-dīn wa al-dunyā*), and raised the question as to whether it is an obligation in Islam.

For Abderrazik, Muslims are not bound by the post-prophetic caliphate but only by Muhammad’s prophecy. The caliphate should not be revived because it is a mere contingent political form, not a religious obligation. In contradistinction to material power “dealing only with bodies without any link to the hearts” (*ikhḍāʿ al-jism min ghayri an yakūna bi-l-qulūb ittiṣāl*), the Prophet Muhammad’s authority and trusteeship (*wilāya*) was actually an exclusive spiritual guidance addressing the “heart’s faith.” While the Prophet Muhammad’s message was a purely religious teaching that did not leave any prescriptions regarding the form of government, the first caliph was actually a political successor. He was not a messenger, but the

caliphal title reinforced the idea that obeying the ruler-caliph was a divine obligation, leaving no room for any political thought autonomous from religion. Hence, for Abderrazik, shari‘a is meant to deal only with “religious” matters and is not part of the “civilian” normative authority regulating the polity in Islam.

The older distinction between bodily deeds and inner self constitutive of the classical Islamic polity is used in a new way in relation to the modern distinction between religion and politics (exemplified by Abderrazik’s *Islam and the Foundations of Government* and subsequent works) that does not recognize the organic connection between bodily deeds and inner self enabled by shari‘a. Yet shari‘a, although now detached from the specific Islamic polity (the caliphate) to which it was initially associated, disrupts the nation-state’s normative arrangements and reenacts itself as the higher justice against which the ruler’s deeds and faith are assessed, as in 2011 during the uprisings in Egypt and other Muslim countries studied in chapter 1.

With the introduction of a new concept of law addressing citizens and attached to sovereignty over a delimited territory, European colonization and the advent of the nation-state displaced the time-spaces of shari‘a addressing selves across territories. State law became the new medium of (a new) material power deployed in time-spaces overlapping with shari‘a’s regulation of social interactions (*mu‘āmalāt*) and the wider polity. In this duality, shari‘a remains both a foundation and a horizon, a promise of justice that is the higher against which the material power’s holder should be assessed.

Shari‘a’s incompleteness and limited effectiveness is now perceived under a new light (the duality with state law) and understood as the result of a new order external and alien to shari‘a, rather than as traits constitutive of shari‘a’s actuality in relationship to selves and to the regulation of the polity. For new movements, for instance the Muslim Brotherhood, reconstructing shari‘a’s relevance in the polity becomes associated with a work of assertion of an effectiveness and a materiality (assimilated to state law) from which it was historically and conceptually distinct. And yet, in the meantime, shari‘a continues to be instantiated in its incompleteness as fragments for the self and communities in given time-spaces, including both “everyday” life and “exceptional” events such as the 2011 uprisings that redefine the polity.

PART TWO

Spirituality

Spiritual Ethics and the Unseen World

Islamic legal opinions about the right attitude to adopt against the unjust ruler raise several questions about the inner self. As we saw in chapter 1, while Yusuf al-Qaradawi assessed President Mubarak's faith from the perspective of the latter's external deeds, his legal opinion entailed certain assumptions about inner self as related to the deeds not only of Mubarak but also of the protesters. For al-Qaradawi, as well as for other classical and contemporary Islamic scholars, following shari'a rules prescribed by jurisprudence (*fiqh*) involves not only the execution of deeds but also the cultivation of inner states.

Although the kind of spiritual topography of the self assumed by al-Qaradawi may be related to contemporary political turmoil, it opens up a time-space of spirituality that exceeds the temporality of the event, for the self needs to cultivate spiritual ethics whatever the social-political context is. Justice requires beings prepared to act ethically in the world, and whose inner selves are educated to devote themselves to the well-being of the community, exemplified by forms of self-sacrifice and solidarity between Egyptians in Cairo's Tahrir Square in 2011.

While the rules of jurisprudence are meant to regulate the individual's deeds as well as social relations and transactions in the Islamic polity, making the community follow these rules by relying on force does not necessarily make individuals good, and may deprive shari'a of its authority if people follow the rules only out of fear of state coercion. Whether or not certain rules derived from shari'a are enforced by the modern state, the question of the inner self's relation to the "externality" of deeds prescribed by jurisprudence remains central for any discussion of the good in the Islamic context. (This question was raised in relation to the ruler and material power in chapter 2.)

Here, one should shift from the “objective” life of Islamic jurisprudence and the procedures commanding the rules of its production, to the subjective perspective that opens up the space of spiritual ethics related to the revealed law, for there are questions that can be raised only for the individual consciousness. Among these questions, one may ask: “Does merely following shari‘a rules makes the self good under God’s sight?”

One cannot explore spiritual and ethical practices in Islam without studying a specific knowledge dedicated to them and associated with different names and distinct understandings in the writings of classical and contemporary Islamic scholars: “the knowledge of the path to the hereafter” (*‘ilm al-ṭarīq ilā al-ākhirā*) for al-Ghazali, “the knowledge of ethical conduct” (*‘ilm al-sulūk*) for Ibn Taymiyya, or, more recently, the “knowledge of ethical conduct” (*fiqh al-sulūk*) for al-Qaradawi. This knowledge about spiritual ethics refers primarily to the relationship between inner self and outer deeds. Through a language of its own, it develops a spiritual topography of the self, giving name and shape to its inner states. Spiritual practices instantiate a space of relationality to God through which the self’s deeds in the world are mediated and assigned a moral value. From this perspective, spiritual practices are intertwined with ethical ones and open up a space of spiritual ethics.¹

This knowledge of spiritual-ethical practices has most famously been closely associated with “the science of Sufism” (*‘ilm al-taṣawwuf*).² While many classical Islamic scholars (such as al-Ghazali) have been associated with Sufism, several others, like Ibn Taymiyya, were known for criticizing what they called the Sufi brotherhoods’ “excesses” that might contravene shari‘a rules. However, they all shared with Sufism an exploration of the self and its spirituality as a necessary condition for ethical improvement. It is true that these scholars did not produce an identical understanding of what should be included in spiritual practices, particularly regarding their acceptability from the perspective of jurisprudence, but they all assumed the existence of a specific knowledge devoted to spiritual ethics and delineated its contours.

ACTUALITY OF THE INVISIBLE

The study of shari‘a’s spirituality and inner self entails situating shari‘a, particularly jurisprudence (*fiqh*) dealing with the material and the visible, in relation to the invisible (*ghayb*).

The study of the invisible in Islam should be interested in divine presence but also in a phenomenological description of the invisible world as part of reality, and forms of interactions of the visible with the invisible. Forms of interaction and continuities between the human and the nonhuman can be theorized in a way that would not be reduced to the opposition subject/world, or nature/culture, set by

modern dualism.³ In the Islamic context, the nonhuman may include a spiritual world autonomous from the sensible world of nature and culture. To use the categories of Islamic thought (for example, Ibn Khaldun, as we will see below), the invisible world is neither located in the sensible world shared with animals, nor the intelligible world specific to humans, but in a third, autonomous space, which is nevertheless accessible to humans under certain conditions.

The anthropology of the invisible should be interested in what it is distinguished from, that is, the visible. The invisible and the visible are not discrete domains that can be “objectively” defined for the purpose of anthropological inquiry. The anthropology of the invisible should deal with different constructions of the invisible and the visible as distinct domains, and their relationships of opposition and continuities, as they have been produced by different modes of being and knowing. In the modern West, the invisible has been relegated to the unknown, and excluded from what can be possibly be known. For example, according to Kantian pure reason, the noumenal world, opposed to the visible phenomenal world or world of appearances, should be left aside by rational inquiry. It is never accessible to human knowledge, for the latter is inherently limited by our intuition of space and time.⁴

This form of knowledge also had consequences for the kind of experiences that modern man is allowed to have. From Kant’s perspective again, God (and angels) is the (invisible) noumenon par excellence that cannot be known, for He does not belong to the (visible) field of experience, and cannot be grasped by our intuition of space and time. The relegation of the divine and magic to the domain of the unknown and invisible has also been interpreted as “the disenchantment of the world,” in which “the ultimate and most sublime values” have withdrawn from social and “public” life to “the transcendental realm of mystic life.”⁵ What was known as the “invisible” in modern Europe did not fit the epistemological imperatives associated to the new modes of knowledge, and its association with the unknown was a way for modern science to delimit its proper domain. For the modern European states, too, peace and order had to be secured from religious “enthusiasm” associated with people inspired by the invisible. In this context, people may claim a relationship to the invisible, and the inner life may be considered as invisible, but it cannot be a foundational element from which collective life and experience are organized.

The relationship between modes of representation, modes of knowing, and modes of being, famously contemplated by Heidegger in “The Age of the World Picture,” sheds light on the constitution of the modern subject, positing itself as the master of the world represented and shaped as an object.⁶ What can be known is what can be seen, and what should be subjected to the subject’s will.⁷ The positing of, and the relationship with, the invisible world sets ontological limits to the human’s ability to know and act, and enables different forms of life and experience

distinguished from the one described by Heidegger. In Islam, the relationship to the invisible described by Islamic scholars (for example al-Ghazali, Ibn Khaldun) should lead humans to humility, for they can only have a limited knowledge of the *ghayb* (invisible) and the *bāṭin* (interiority) that are nevertheless foundational and co-constitutive of the revelation and existence.

SHARI‘A’S SPIRITUALITY

One way to explore shari‘a’s spirituality is to discuss Sufi knowledge and practices in relationship to jurisprudence. This would include both spirituality entailed by shari‘a rules, and the ways in which spirituality should be grounded in shari‘a rules. I will do so relying on an account of my encounter in Cairo with the central branch of one of the main Sufi brotherhoods in the Muslim world, the ‘*Ashīra Muḥammadiyya* (the Prophet Muhammad’s cognate community) of the *Ṭarīqa Shādhiliyya* (the *Shādhiliyya* path).⁸

The main site of the ‘*Ashīra* is a mosque situated in Cairo’s cemetery, adjacent to a building where it has its main activities, notably the Academy for Sufi Studies and the Heritage Sciences (*Akādīmiyyat al-Dirāsāt al-Ṣūfiyya wa ‘Ulūm al-Turāth*). On the frontispiece of the mosque where the main branch of Sufi brotherhood is located, one may read its full name: *The Sufi, Salafi, and Lawful Shādhiliyya Muḥammadiyya Path (al-Ṭarīqa al-Shādhiliyya al-Muḥammadiyya al-Ṣūfiyya al-Salafiyya al-Shar‘iyya)*. It is also written that the Qur’an and the Sunna are its foundational law (*dustūr*), and exemplary ethics and worship its path (*ḥusn al-khuluq wa ḥusn al-‘ibāda*). The full name of the *Ṭarīqa* emphasizes the lawfulness of its practices as well as its grounding in the Qur’an and the Sunna. This emphasis is not only a rhetorical way for the Sufi path to defend itself against attacks of many contemporary Salafi scholars who condemn Sufi practices; it also reflects a commitment to live the revealed law (shari‘a) as spirituality.

The scholarly project of the Academy’s founders consists in teaching shari‘a disciplines as they are taught in Al-Azhar, but with a much stronger emphasis on the Sufi perspective. Besides the classical books relied upon in the training of Al-Azhar’s scholars, the Academy’s training includes courses regarding the Sufi understanding of legal rules (*al-fiqh al-ṣūfī lil-aḥkām*), the Sufi understanding of belief (*al-fiqh al-ṣūfī lil-‘aqīda*), the Sufi understanding of the Qur’an (*al-fiqh al-ṣūfī lil-tafsīr*), the Sufi understanding of hadith, and Sufi ethical behavior. Usually referring to the discipline of Islamic jurisprudence, the word *fiqh* is used here in the broader sense of understanding, and suggests the entwinement of Sufism with all the disciplines related to shari‘a. The Academy’s educational and scholarly mission, understood as “a revivification of the sciences of religion within the community,” echoes al-Ghazali’s eponymous book, and is an attempt to ground Islamic

ethics and exploration of interiority in shari'a's sources and jurisprudence inspired by al-Ghazali's thought.

The spiritual practices prescribed by the *Ṭarīqa*'s sheikh are supererogatory and entail a commitment to the law's prescriptions. They address Muslims who are already performing obligatory acts of worship prescribed by jurisprudence, and who are ready to do more than what the law requires. However, spirituality is not only located in the sphere of supererogatory deeds defined by the law but is also related to the way Muslims perform obligatory shari'a rules, particularly in the acts of worship.

Several times a month, I attended the *ḥaḍra* (literally: presence), the main collective ritual of the *Ṭarīqa*, which consisted in a collective reading-aloud of several *sūrat* of the Qur'an. Although belonging to the category of worship acts, the *ḥaḍra* is not obligatory from the perspective of jurisprudence. Instead, it is a recommended practice (*nāfila*) for whoever wants to become "closer to God." Remembering God (*dhikr*) at the *ḥaḍra* is an exercise of repetition that may help the participant reach a state of *ṭuma'nina* (serenity) and *sākina* (peacefulness). It is also a moment in which the link between the members of the community is reenacted as the collective performance strengthens the emotional effects of ritual utterances.

Besides the twice-weekly *ḥaḍra*, each member of the *Ṭarīqa* is required to follow the everyday ritual prescriptions. After the execution of the obligatory prayers (*ṣalāt*) at the prescribed time, the continuous reading of the Qur'an, and a time devoted to instruction in matters of jurisprudence (*fiqh*), each member performs the *wird* (daily ritual assignments). This means repeating at least one hundred times each the *istighfār* (seeking forgiveness from God), the *ṣalāt 'alā an-nabiyy* (blessing upon the Prophet), and the *tahlīl* (declaration of God's Oneness). The *wird* may be recited either silently within the "heart" or out loud with the "tongue," but it is preferable to recite them both with the tongue and within the heart. If the adept is unable to recite each prayer one hundred times, he can reduce the number of repetitions as to avoid any interruption of the bond between him and God (*wa lā yanqati' mā baynahu wa bayna Allah abadan*).⁹

However, the *Ṭarīqa*'s members are not only dedicated to worship or the transmission of Islamic knowledge and the training of Islamic scholars; they are also involved in social and beneficence activities. The *Ṭarīqa* has established medical centers, orphanages, nursery schools, workshops, professional training centers for girls, and literacy classes in several poor neighborhoods of Cairo such as al-Muqāṭam. The *Ṭarīqa*'s members understand their broader role in Egyptian society as a "call" (*da'wa*) whose main goal is to educate people about religion, spirituality (*rūḥāniyyāt*), culture, and ethics (*akhlāq*). It includes also "a global Sufi reform (*iṣlāḥ ṣūfī shāmīl*)" grounded in the Qur'an and the Sunna, as a way to contribute to "Islam's awakening (*ṣaḥwat al-islām*)."¹⁰

THE TWO KNOWLEDGES: DIVINE ILLUMINATION AND JURISPRUDENCE

One night of Ramadan, after a session of *dhikr* in the mosque, the *Ṭarīqa*'s sheikh reminded members that they should always follow shari'a rules since, in "true Sufism," spiritual truth can never be opposed to jurisprudence:

By analogy to Al-Khidr,¹¹ inner truth (*ḥaqīqa*)¹² is opposed to the revealed law (*shari'a*). There are people who claim to be Sufi, who think that once one reaches truth, one is no longer bounded by Islamic legal obligations. They rely on a false interpretation of *Sūrat al-Hijr*, 99: 'And worship your Lord until you reach certainty' (*wa a'bad rabbaka ḥatta ya'tika al-yaqīn*). They say that *al-yaqīn* means the stage of inner truth (*maqām al-ḥaqīqa*) while in fact it means death. Saying that *ḥaqīqa* is opposed to shari'a is a heresy (*zandaqa*). It is true that shari'a deals with the external and apparent dimensions of things (*ẓawāhir al-umūr*) and the appearances of worship (*ṣuwar al-'ibādāt*) and *ḥaqīqa* has to do with the spirit (*rūḥ*) of things and the underlying reason of worship (*ḥikmat al-'ibādāt*), but they are one and the same thing, and one cannot be without the other for they are like the spirit to the body.

In the Qur'an, *Sūrat al-Kahf* (*The Cave*) tells us a story about the encounter of Moses with a wise man, identified in a hadith as Al-Khidr (lit. the "green one"). Moses asks Al-Khidr to teach him his wisdom. The latter agrees, on the condition that Moses never ask a question and remains patient. Several times, Al-Khidr acts against what seems good to Moses: he makes a hole in a boat they had boarded to reach the seashore, he kills an apparently innocent young man, and he rebuilds a destroyed wall in a village without asking for compensation. Each time, Moses shows signs of perplexity, condemns Al-Khidr's deeds, and asks for explanations. Finally, Al-Khidr gives his motives to Moses and assigns a new meaning to facts and events as grasped by Moses's experience ("I will tell you the true meaning of what you were not able to bear with patience" (*sa-'unabbi'uka bi-ta'wil mā lam tastaṭi' 'alayhi ṣabran*), 78). He shows that what were apparently bad deeds were in fact virtuous ones, for he had access to a knowledge that remained unavailable to the impatient Moses at the time of each action. As *Sūrat al-Kahf* tells us, although Al-Khidr had access to a higher form of knowledge, he did not act in his own capacity but was part of a divine plan: "I did not do it of my own accord" (*wa mā fa'altuhu 'an amrī*, 82).

Several interpretations of the Qur'anic story emphasized the fact that the encounter between Moses and Al-Khidr is also the encounter between two forms of knowledge, for the former is the bearer of the law while the latter has received knowledge directly from God (*al-'ilm al-ladunī*) that gives access to the unseen world (*al-ghayb*) and called by al-Ghazali, in his *Risāla Laduniyya*, the "knowledge of the unseen given directly by God" (*al-'ilm al-ghaybī al-ladunī*).

In classical as well as contemporary Islamic scholarship, the distinction between revealed law (*shari'a*) and inner truth (*ḥaqīqa*) refers to two kinds of knowledge

that are constitutive of revelation itself. On the one hand, humans are able to know God's will through hermeneutical reason dealing with the Qur'an and the Sunna, which textuality gives a ground for the distinction of truth from falsity. As jurisprudence (*fiqh*), shari'a knowledge has been transmitted from generation to generation. It may be taught and acquired among scholars but also by any Muslim asking for a rule on a specific matter. On the other hand, the knowledge of inner truth is only given by God to whom He chooses and can never be acquired through hermeneutical reason and sensorial experience. Yet, shari'a addressing Muslims has been itself *revealed* to the Prophet Muhammad, who transmitted it to humankind, the same way other laws (*sharā'i'*) have been revealed to other prophets before Muhammad. Shari'a translates revelation (*wahy*) into the sensorial and material world of experience, and has been given shape into God's words as transmitted by the Prophet, as well as into the Prophet's proper sayings and deeds, which all became the foundational texts of Islam.

For classical and contemporary Islamic scholars, there is no question that the two forms of knowledge exist, for it is, as we saw, constitutive of Islam itself. The question that has been usually discussed is whether the knowledge of inner truth through revelation (*wahy*) is possible for any human after the last prophet, that is, Muhammad. Most Islamic scholars would acknowledge the possibility not of revelation but inspiration (*ilhām*) after the prophecy, notably for God's friends (*awliyā' Allah*). Yet they would recall that, although someone may have been given this knowledge by God, it can never be considered as having legal authority.

When related to the story of Khidr and Moses, inspired knowledge is understood as a supersensible knowledge of the unseen world, that is nevertheless related to the sensible-visible world, for any human endowed with it may be able to know and do what is not accessible to other humans through sensorial experience or reason such as *karāmāt* (wonders, for example the ability to know future events in Khidr's story). Inspired knowledge, because of its very non-grounded nature, was excluded from jurisprudence, and more generally from Islamic forms of knowledge that were considered a collective obligation (*farḍ kifāya*) of the community and part of scholars and jurists' training. However, the work of most Islamic scholars committed to hermeneutical reason and jurisprudence but also Sufi masters and thinkers was to draw a limit between what practices can be receivable and what cannot be accepted from the perspective of the revealed law, rather than rejecting all Sufi practices and beliefs. Hence, as pointed out by the sheikh of the Sufi Brotherhood, the knowledge of the inner truth should never be understood as opposed to the law, and can never be considered as authorizing the inspired man to not submit to shari'a.

In several Sufi writings, the access to *al-ghayb* opens up another order of reality that may lead, in some situations, to the neglect of shari'a. Paradoxically, as a revealed law that ultimately binds Muslims to *al-ghayb* as well as to the hereafter

(*al-ākhira*), shari‘a, or more precisely jurisprudence (*fiqh*), grounds them into sensuous experience, for it addresses the body’s materiality. To a certain extent, the potential tension between *ḥaqīqa* and shari‘a is less a tension between the world of experience and the world of imagination, than between two forms of experience. Islamic legal rules prescribed by jurisprudence call for embodiment, but the access to spiritual truth entails a form of experience that is not grounded in the visual-objectifiable world, a paradoxical non-sensuous and disembodied experience.

THE UNSEEN WORLD

Revelation is the foundational event connecting humans with *al-ghayb*. Mentioned several times in the Qur’an and the hadiths, the unseen world (*‘ālam al-ghayb*) is an order of existence to which the *‘ilm al-ladunī* (knowledge given directly from God) gives access, and that is not usually accessible through sensorial experience. In the sixth introductory chapter of the *Muqaddima*, devoted to the question of access to the invisible world (*al-ghayb*), Ibn Khaldun recalls that there is a category of humans who interact with it either as a natural gift (*fiṭra*), or as a result of practice and exercise (*riyāḍa*). They have been chosen by God to be His instruments among the humans in order to guide them in the avoidance of evil and to show them the path of salvation (*najāt*). The entities invisible to humans (*al-kā’ināt al-mughība*) can be known to them only through divine knowledge that has been transmitted by God to the elected men. Revelation is the sign that distinguishes prophets from other humans and seems to generate a state of absence (*ghaybatan*), but is in fact a moment of encounter with the “spiritual angel” (*al-malak al-rūḥānī*).¹³

The existence of different forms of knowledge is predicated upon the cosmology of plural worlds contemplated by classical Islamic scholars. For Ibn Khaldun, humans live in three distinct worlds: the first is the sensible world (*‘ālam al-ḥiss*); the second is the world of thought; the third is the world of souls (*arwāḥ*) and angels (*malā’ika*) that has a direct influence (*āthār*) on humans. The third world can be known through vision (*ru’ya*) and other manifestations in sleep; these may not appear to people when they are awake, but are nevertheless “real, belonging to the world of truth” (*innahā ḥaqq wa min ‘ālam al-ḥaqq*).¹⁴ Dreams, occurring when thought is free from the senses (*ghība mina al-ḥiss*), and when the grasping faculty has stored images in the inside (*bāṭin*), are a clear proof of the existence of the spiritual world (*al-‘ālam al-rūḥānī*). However, the details of the third world are known mainly through the revealed law accessible through faith (*īmān*).

In this triadic configuration, humans live in between the first and the third world; they share with animals the sensible world, while they share with angels the world of reason and souls. In the latter, there are only entities abstracted from bod-

ies (*jismāniyya*) and materiality (*mādda*). It is a place of “pure reason” (*‘aql ṣarf*) where reason, the reasonable (*‘āqil*), and the reasoned (*ma‘qūl*) are all united.¹⁵ For humans, there is always “a veil” (*ḥijāb*) that makes the access to the third world uneasy but not impossible. Humans can unveil it (*kashf al-ḥijāb*) through the repetition of remembrances (*al-riyāḍa bi-l-adhkār*), such as prayer (*ṣalāt*) or by performing the most important obligations like fasting, and by orienting oneself to God (*al-wujh ilā Allah*).¹⁶ In other words, the invisible world, like the first and the second world, does not need humans to make it exist. It exists by itself, as part of God’s creation. But humans can have access to it, either passively through sleep, or actively through devotional duties.

Although the twin forms of knowledge, *shari‘a* and *‘ilm ladunī*, are related to the existence of two worlds, the visible and the invisible, they may produce two conflicting truths. On the one hand, no Islamic scholar can deny the existence of the unseen, and the knowledge associated with it, for they are both mentioned several times in the Qur’an. On the other hand, for jurists to acknowledge the possibility of inspired knowledge to prescribe rules of conduct with legal authority for the whole community would bring the suprasensible and non-grounded truth into the material-sensible world. From their perspective, it is important to stick to the material truth grounded in *shari‘a*’s textuality (that is, the Qur’an and the Sunna) in order to secure the production of rules addressing individual obligations as well as regulating the life of the community. Hence, the existence of the unseen world (*‘ālam al-ghayb*), as well as the possibility of inspired knowledge and *karāmāt* (supersensible wonders), were posited, acknowledged, and even described by Islamic scholars following what the Qur’an and the Sunna tell us about it, but they would never consider it as a source of jurisprudence.

Like the status of the inner self as related to jurisprudence, the positing of and belief in the unseen world (*‘ālam al-ghayb*) raises too the problem of the limits of *fiqh* as a form of knowledge based on material and objectifiable experience when it assesses facts and deeds. The meaning of the world of material experience is shaped by the materiality of the foundational texts, which are themselves mediated and embodied by a voice when they are recited or quoted as a textual proof. And yet, as knowledge of the revealed law, jurisprudence is also a bond to the other world, for the revelation is the text-voice through which humans can know another order of existence that is not immediately available to the senses. The Qur’an and the Sunna are the sources from which both prescriptions organizing worldly and material life, and references to the unseen world, can be formulated. The tension and continuity between material and non-material forms of experience opened up by the revelation enables two forms of knowledge, juridical and spiritual, embodied and disembodied, addressing external deeds and inner selves both in their unity and disharmony.

BĀṬĪN AND GHAYB: JURISPRUDENCE
AND THE NON-SENSUOUS

Although distinct from each other, and although they may have different uses, the *bāṭin* (inner) is closely related to the invisible (*al-ghayb*). When referred to as the invisible world (*‘ālam al-ghayb*), usually as opposed to the visible world (*‘ālam al-shahāda*) mentioned in the Qur’an, the *ghayb* is associated with an order of being and a cosmological reality that cannot be grasped by the senses. Although it can also signify the inner of things in the world, the *bāṭin* is often used in reference to the self, whose inner thoughts, emotions, and feelings are never accessible to other individuals in the community, but are known only by God. Neither *bāṭin* nor *ghayb* can be grasped by the eye or any other senses for they are not located in sensuous and material reality. As such they open up the possibility of non-sensuous and non-material life. But while the *bāṭin* may be shaped by the self of which it is constitutive, notably through acts of worship and spiritual exercises, the *ghayb* is an order of reality that exists independently from the individual’s sight and perception. Although the self’s deeds may have an effect and a meaning in the *ghayb*, it is never accessible to her, for only God has an absolute knowledge of this realm. Yet, as mentioned by Ibn Khaldun, in certain circumstances, spiritual exercises may allow the self to have access to the spiritual world. In exceptional cases, thanks to their devotion, the very few can be prepared to receive supersensible knowledge directly from God, which can never be acquired and remains a divine gift.

Because both *ghayb* and *bāṭin* are not perceptible by the senses, and as such do not belong to sensuous and material reality, they are not part of the territory of adjudicated jurisprudence (*fiqh*). Yet for Islamic scholars shari‘a rules are not followed only for themselves, but also because it is expected that they would improve the self ethically, both in its outer deeds and inner state. Although jurisprudence prescribes bodily deeds, it should nevertheless shape inner selves (*bāṭin*) when related to spiritual and ethical ends exemplified in the obligatory act of prayer (*ṣalāt*). Hence, while judges are not usually authorized to judge inner selves, scholar-jurists, notably when they act as muftis, may assume certain forms of inner selves related to past actions (as we saw in al-Qaradawi’s fatwa about the 2011 Egyptian Revolution in chapter 1), or may directly address the *bāṭin* of a self in a response to a question involving future actions.

The *bāṭin*, because it is related to selves, is present in several ways in different instantiations of jurisprudence but also in other disciplines related to the latter, such as the science of ethical behavior (*‘ilm* or *fiqh al-sulūk*). However, the *ghayb* (although acknowledged as part of existence and although shari‘a is itself a bond to the invisible) is nevertheless excluded from the field of intervention of *fiqh*. Of course a scholar-jurist may talk about the *ghayb* as mentioned in the Qur’an and the Sunna, but he would usually recall that only God knows this realm, and he

would never claim the knowledge directly given by God (*al-‘ilm al-ladunī*) that would allow him to know what is beyond textual proof and sensible reality, as Khidr did with Moses in *Sūrat al-Kahf*. Although the *bāṭin* and the *ghayb* are closely related to each other, most classical and contemporary scholars-jurists (for example al-Qaradawī) would write extensively on the duties of the inner self (*bāṭin*) for purposes of ethical improvement and would delimit a space of spiritual ethics, but would not adventure themselves in the *ghayb*.

Al-Qaradawī acknowledges that the knowledge produced by the heart (*ma ‘rifā qalbiyya*) in the *bāṭin* is a form of direct awareness that does not rely on pure logic, and may refer to what is called today “the spirit” (*rūḥ*) or “consciousness” (*damīr*) or “vision” (*baṣīra*).¹⁷ As such, it opens up the possibility of grasping dimensions of existence that relate to *al-ghayb*. Although al-Qaradawī does not want to leave the door open to “illusions, lies and excesses,” he still acknowledges the possibility of inspired knowledge (*ilhām*) and unveiling (*kashf*), but only as God’s gift as mentioned in the Qur’an, *Sūrat Āli ‘Imrān*, 73–74: “Grace is between God’s hands, He gives it to whom He wants.”¹⁸ The knowledge of *al-ghayb* is among the sciences that the Muslim cannot ask for, because it is beyond rational and sensorial abilities and cannot be grasped by the senses nor reason (*mā ghāba ‘anī al-ḥiss wa ghāba ‘anī al-aql*).¹⁹ Yet, although humans cannot know the *ghayb*, they are nevertheless required to believe in and have faith in it, as mentioned in *Sūrat al-Baqara*, 3.

THE SPACE OF SPIRITUAL PRACTICES AND JURISPRUDENCE

Although belonging to the space of Islamic lawfulness, spiritual practices as understood by Sufi scholars should never be considered obligatory. Spirituality enables ethical improvement that is situated beyond the obligatory rules prescribed by jurisprudence. However, it does not mean that one can explore the inner self and engage with spirituality without following Islamic legal obligations. Rather, ethical improvement associated with spiritual practices is possible only after one has done what the law requires from each individual. While spiritual practices are not at the top of the hierarchy of legal obligations, they are nevertheless the only path for ethical improvement. This paradox is better understood when one listens to the fifteenth century Fes’s scholar Ahmad Zarruq, quoted by the scholar Muhammad Muhanna (who is also adviser to the Grand Imam of Al-Azhar), in a lesson delivered at the *‘Ashīra Muḥammadiyya*: “The jurisprudence’s rule is general, addressing everyone (*ḥukm al-fiqh ‘ām fī al-‘umūm*), while Sufism’s prescription is specific, addressing a few (*ḥukm al-taṣawwuf khāṣ fī al-khuṣūṣ*).”²⁰

For Muhanna, Zarruq’s sentence means that:

“The Sufi is obliged to go with what jurisprudence prescribes, and never the other way around’ (*lazama ‘alā al-ṣūfī al-nuzūl ilā ḥukm al-fiqh lā al-‘aks*). It means that

jurisprudence formulates the minimal requirements for the good and the bad, for the lawful and the unlawful. Sufism is a way to perfectibility for yourself, as an individual, on the condition that you don't do wrong and contradict the general rule addressing everyone (*ḥukm al-'umūm*). That is why the Sufi needs to abide by the general rule of the jurisprudence's scholar. But the reverse is not true; you cannot oblige the *faqīh* to abide by the rule of the few (*ḥukm al-khuṣūṣ*). The revealed law's prescriptions take the form of either fatwa or spirituality (*al-aḥkām tadūru bayna al-fatwā wa al-taqwā*), and it is impossible to constraint the fatwa's author to abide by spirituality (*taqwā*).²¹ However, 'the spiritual person needs to submit to the fatwa (*wa lakin nulzim ṣāhib al-taqwā bi-l-fatwā*)'.

Yet, the assessment of spiritual practices as related to the hierarchy of legal rules does not mean that the obligatory rules cannot be performed in a spiritual way. Rather, ethical improvement entails the cultivation of inner states when doing the obligatory rules. Ahmad Zarruq, like other authoritative figures of classical Islamic scholarship, is known for having practiced Sufism through jurisprudence. The passage Muhanna refers to is taken from Zarruq's most important book, *The Rules of Sufism* (*Qawā'id al-Taṣawwuf*), whose purpose is to "give an introduction to the sources of Sufism from a perspective merging *ḥaqīqa* (inner truth) and *sharī'a*, and ties jurisprudence with the path (*ṭarīqa*)."²² For Zarruq, there can be no Sufism without jurisprudence (*fiqh*) because it is only through the latter that one can know the "outward rules of God" (*aḥkām Allah al-zāhira*), and there can be no jurisprudence without Sufism because there can be no deed without truthfulness (*ṣidq*) and orientation (*tawajjuh*) toward God.²³

Sufism, as practiced by its great figures and founders of the main "paths" (*ṭarīqa*) or by classical Islamic scholars, does not consist in mere spirituality free from jurisprudence. It rejects spirituality whose purpose would be to transgress the law or to liberate oneself from it. Rather, Sufism shapes a space for spirituality grounded in the prescriptions of the law. The self needs not only to fulfill the requirements of jurisprudence formulated by scholars (*fuqahā'*) and muftis, but also to achieve them in a spiritual way. The self is spiritual when a person does the legal obligations, and achieves more than those obligations regarding both her acts of worship and social interactions. For example, when someone performs prayer (*ṣalāt*) five times a day, she is doing what jurisprudence has set as an individual obligation but which she lives as a spiritual moment, allowing her to be closer to God. Being spiritual is not about avoiding the law or transgressing it; it is about *how* she performs the law's prescriptions in an attempt to make God present, and how she can do more than what the law enjoins her to do.

In contemporary Egypt, as well as in other Muslim countries, spiritual ethics is not associated only with Sufi brotherhoods, but is rather constitutive of Islamic knowledges. Several contemporary scholar-jurists are known not only for their legal knowledge, but also for their teachings regarding spiritual ethics. The science

of spiritual ethics, which addresses primarily the inner self, does not rely on procedural truth displayed in the sources of jurisprudence (*uṣūl al-fiqh*) and used by scholars when producing rules in legal opinions. However, as understood by al-Qaradawi and other contemporary and classical Islamic scholars, it is based on, and confirmed by, textual truth enclosed in shari'a's sources.

In *Fi al-Ṭariq ilā Allah*, al-Qaradawi is interested in giving shape to spiritual life (*al-ḥayāt al-rabbāniyya*) in Islam. When describing spiritual ethics related to shari'a, al-Qaradawi gives an account of his own spiritual journey beginning with his youth in Egypt. He recalls several figures from his social and academic milieu who introduced him to spiritual teachings partially shaped by Sufi practices in the 1940s and 1950s, either in the village where he grew up, or as a member of the Muslim Brotherhood, or as a college student. In his formative period, al-Qaradawi also read other books and classical Sufi authors, and recounts his encounter with the Muslim Brotherhood as a spiritual experience relying on Sufi practices (as *dhikr*).

Like several classical Islamic scholars, al-Qaradawi uses the word *fiqh* with the broader meaning of insight rather than mere jurisprudence. *Fiqh al-sulūk*, understood as the knowledge of ethical behavior, is distinct from jurisprudence per se, for it does not deal with the prescriptive or proscriptive injunctions of the law and, although it is tied to the foundational texts, it does not rely on procedural hermeneutics to produce a legal rule to be followed by the Muslim. Yet, it is intertwined with *fiqh* as jurisprudence because it is not possible to improve ethically without obeying the rules prescribed by the law. Like al-Ghazali's *Iḥyā' 'Ulūm al-Dīn*, al-Qaradawi's *Fi al-Ṭariq ilā Allah* is an attempt to give its due place to "internal" emotional and affective states in Islamic practice, in harmony with the "external" deeds prescribed by the law.

In Morocco, the movement initiated in the 1970s by Abdesslam Yassine and formally known as *al-ʿAdl wa al-Iḥsān* in 1987 also reclaims al-Ghazali's teachings in *Iḥyā' 'Ulūm al-Dīn*, guiding the interpretation of jurisprudence from a Sufi perspective. Yet, in this case, in a way similar to the Shi'i imam, it is through the spiritual master's guidance that jurisprudence is practiced. In addition, because of his proximity to the divine (*walāya*) and his unique access to the invisible (*al-ghayb*), the spiritual sheikh has a knowledge that supersedes the scholar of jurisprudence (*faqīh*)'s knowledge, as it encompasses the latter. Here, the guide (*murshid*) has the authority to determine how jurisprudential rules should be performed, accommodated or changed.²⁴

SALAFISM, SUFISM, AND THE AUTHORITY OF HADITH

Some contemporary Muslims in Egypt would ask muftis: "Are Sufi practices lawful (*shar'iyya*) from the perspective of Islam?" These questions are raised today in a

context where several Salafi scholars have declared most of the Sufi practices unlawful. In this highly argumentative field, Sufi jurists and scholars, notably those trained at Al-Azhar, had to adopt new textual strategies to relate their practices systematically to the Qur'an and the Sunna. The book *Uṣūl al-Wuṣūl, Adillat Ahamm Ma'ālim al-Ṣūfiyya al-Ḥaqqā, min Ṣariḥ al-Kitāb wa Ṣaḥiḥ al-Sunna*, authored by Muhammad Zaki Ibrahim, the former head (*rā'id*) of the Egyptian branch of the *Ṭarīqa Shādhiliyya*, has been written as a response to those who "accuse Sufis of unbelief (*kufṛ*) and heresy (*zandaqa*)."²⁵ In this book, and more generally in most of the contemporary polemics between Sufis and Salafis, the hadiths are the main textual source allowing scholars to draw a limit between lawful and unlawful practices. Although these debates are possible only to the extent that both Sufi and Salafi scholars already agree on the Sunna's authoritativeness as such, they do not necessarily agree on the authority and relevance of the different categories of hadiths for truth-seeking inquiries.

In *Uṣūl al-Wuṣūl*, Zaki Ibrahim does not address the ethical states (*al-maqāmāt al-akhlāqiyya*) that one usually finds in the classical literature about spirituality and ethics. It is not written in the language of initiation but in the language of demonstration. Its purpose is not *to initiate* the reader to spiritual-ethical practices but *to demonstrate* their lawfulness. To do so, it relies on a set of assumptions about the status of textual truth related to hadiths as well as on a set of procedures of truth-seeking. According to al-Nawawī,²⁶ as quoted by Zaki Ibrahim, it is lawful and recommended to rely upon a weak hadith as long as it has not been falsely attributed to the Prophet Muhammad (*ḥadīth mawḍu'an*) in matters related to virtuous actions and as a way to arouse fear or desire. For, unlike a false hadith that has no truth in it, there is a partial truth in a weak hadith. However, a weak hadith should never be used to determine jurisprudential rules (*aḥkām*) or creed (*'aqīda*).

The discussion about the status of hadiths according to their degree of authenticity is important for Sufi scholars because the use of weak ones has been the main critique against Sufi texts and practices formulated by several contemporary Salafi scholars. For Zaki Ibrahim, it is true that the weak hadiths can never have the status of a legal obligation. Yet, they cannot be fully proscribed because they have a "space of lawfulness" (*majāl shar'i*)²⁷ that is situated in the sphere of the recommended (*al-mustaḥabb*). It is the degree of truth, or more precisely authenticity, of a text that determines the position of the deeds it prescribes (or proscribes) in the hierarchy of rules. As often in Islamic knowledge, this mode of reasoning is animated less by a binary logic opposing the true to the false than a form of thought allowing the formulation of a range of nuanced positions.

For several readers familiar with Western scholarship on Islam, the use of name *Salafi* in conjunction with *Sufi* by the main branch of the *Ṭarīqa Shādhiliyya* or by influential scholar-jurists such as al-Qaradawī to situate their method and practices may seem counterintuitive. Indeed, the constitution of the categories of

“Salafism,” “Sufism,” but also “Islamism” refer to fixed and exclusive identities for purposes of mapping social reality. From this perspective, claiming to be both Salafi and Sufi is an oxymoron that cannot be consistent with the premises and conclusions of several contemporary studies on Islam.

The practices of the *Ṭarīqa Shādhiliyya* but also the teachings of al-Qaradawi show that the reference to *salafiyya* is displayed as an epistemological approach grounded in the Qur’an and the Sunna. While *salafiyya* is first and foremost a method (*al-manhaj al-salafi*) consisting in proving any claim by relating it to the hierarchy of texts and exemplary practices of the Prophet and his Companions, the reference to *taṣawwuf* is a way to explore and develop spiritual practices related to the inner self. *Salafiyya* raises the issue of truth and falsity, for example when the believer is asking the question, “Is such or such belief or deed authorized by the least disputable proofs of the Qur’an and the Sunna transmitted to us by the previous generations from the time of the Prophet Muhammad?” *Taṣawwuf* is concerned with the knowledge of the inner self and the set of practices expanding the space of spirituality that may or may not be grounded in the textual proofs of the Qur’an and the Sunna. Hence, there is no a priori contradiction between adopting a Salafi *manhaj* questioning any claim from the perspective of the Qur’an and the Sunna (or more specifically, the most valid sayings of the Prophet in the hierarchy of hadith according to their degree of authenticity), and expanding one’s spirituality through a set of teachings and without necessarily belonging to a Sufi brotherhood. From this perspective, not only one can rely on *salafiyya* and *taṣawwuf* at the same time, but also ground *taṣawwuf* on a *salafi* method, as the members of the ‘*Ashīra Muḥammadiyya* or al-Qaradawi do.

The intertwinement of *salafiyya* and *taṣawwuf* is far from rare in Egypt as well as other Muslim countries, particularly if we study closely the writings of contemporary influential Islamic scholars and thinkers like Muhammad Abduh, Hasan al-Banna, Ali Gom’a, or Allal al-Fasi. Even before Ibn Taymiyya, to whom the *Salafiyya* is today attached in Western scholarship, al-Ghazali explicitly grounds his exploration of spirituality in the teachings of “*al-salaf al-ṣāliḥ*” in his *Ihyā’*, as we will see in the next chapter.

The Spiritual Topography of the Self in Classical Islam

SHARI‘A, THE SELF, AND THE ISLAMIC

The relationship between jurisprudence and the self contemplated in this book entails a broader argument about the relationship between forms of shari‘a knowledge and selves. Jurisprudence informs the formation of Islamic selves through formal prescriptions inhabited and embodied in deeds and through what it assumes about beliefs and inner selves, but also through its limits when it comes to other forms of knowledge (*kalām* and Sufism). It is this relationship that Shahab Ahmed’s attempt to study Islam in a way attentive to the self and to “meaning-making” paradoxically fails to recognize.¹

Ahmed argues that the meaning of “Islam,” and the substantive “Islamic” understood as a scholarly category by Western academia, has to be revisited, as these concepts are unable to encompass the full range of contradictory norms and practices that have been historically constitutive of Muslim existence, mainly in “the Balkans-to-Bengal” territories. Ahmed’s critique is notably turned against academics who privilege a definition of Islam based on the legal normativity of shari‘a (“Islam as law”), and who deem Sufism or philosophy not properly “Islamic” on the grounds that they are not authoritative enough among Muslims, remaining peripheral in their scholarly and religious practices. Against “the supremacy” and “egalitarianism” of the prescriptive legal lens, Ahmed reclaims the significance of “exploration” and “hierarchy” as they have been historically displayed by Muslims in the Balkans and parts of Asia.²

For Ahmed,

this totalizing 'legal-supremacist' conceptualization of Islam as law, whereby the 'essence' of Islam is a phenomenon of prescription and proscription, induces, indeed constrains us to think of Muslims as subjects who are defined and constituted by and in a cult of regulation, restriction and control. As a matter of social analysis, it fails to come to terms with the human and historical phenomenon adumbrated in Chapter 1: the pervasive historical fact of real societies in which Muslims who were very much in the 'social mainstream' set up, valorized positively, celebrated, and lived by norms that were in theoretical and practical contradiction of the totalizing legal discourse that we are told here is 'the core and kernel of Islam'. . . . The primacy that is given to the constitutive determinacy of legal discourse over other discourses serves to distort our perspective and selectively prevents us even from recognizing—let alone understanding—that, historically, Muslims have constructed normative meaning for Islam in terms that allowed them to live by and/or with norms other than and at odds with those put forward by legal discourse.³

While deploring the primacy of the "legal" over other "discourses" in scholarship about Islam, but also as the main language used by contemporary Muslims in their lives, he writes: "The overall effect . . . is for law to become . . . the most important discourse definitive and constitutive of modern Islam and of Muslims—with self-definitional and self-constitutional and pre-occupation of the thought-activity of Muslims being irresistibly drawn toward engagement with legal discourse with its preoccupation with prescription and proscription, and its stark classificatory concern with 'permissible' and 'impermissible' (*ḥalāl* and *ḥarām*) as the pre-eminent criteria for meaning-making."⁴

Ahmed's criticism of the hegemony of "law" is framed in a way that precludes *What is Islam?* from exploring why shari'ah, and more specifically jurisprudence (*fiqh*), has been central in the past (including in the "Balkans-to-Bengal complex," to remain consistent with the argument and time-space of *What is Islam?*) and present of Muslims. This is not in terms of extraneous factors such as the pervasiveness of law in state and society as a recent import constitutive of modernity that distorted Muslims' own understanding of Islam. Rather, it is through an understanding of *how* Muslims produce, transmit, and inhabit jurisprudential norms. Take the juridical notion of *ijtihād* (personal effort), recognized by Islamic scholars as one of the four sources of jurisprudence (alongside the Qur'an, hadith, and consensus), by which the discipline of *fiqh* recognizes doubt, uncertainty, probability (*ẓannī*), and multiplies possibilities in the search for the truth (the correct rule to be applied in a given case) initiated by each *mujtahid*. Since the beginning of the twentieth century, there has been no other concept as widely used as *ijtihād* (abstracted from, and yet mirroring its technical meaning), to designate the effort to constantly and open-endedly push further the limits of knowledge in all scholarly fields as well as in daily life. This is precisely what Ahmed would

call “exploration,” in opposition to what he sees as the narrow-mindedness of jurisprudence.

In addition, the language of Islamic jurisprudence should not be reduced to the duality prescription/proscription, as it includes categories of acts allowing for a more nuanced characterization of deeds. Besides the mandatory act (*farḍ*) and the forbidden (*ḥarām*), the recommended (*mandūb*), the permissible (*mubāḥ*), and the reprehensible (*makrūh*) offer a wider range of possibilities. It is clear that *What is Islam?*, while paradoxically reclaiming all historical practices, norms, and genres in any attempt to define Islam, systematically describes juridical discourse as necessarily producing the “unambiguous, bounded and binding meaning”⁵ leading “to a cult of regulation, restriction and control”⁶ without paying attention to the concrete forms of Islamic jurisprudence and their significance for Muslim selves in given times and spaces. When Muslims perform the act of prayer (*ṣalāt*), they are performing an act of jurisprudence, and yet, they inhabit shari‘a rules in various ways that cannot be reduced to the “unambiguous, bounded and binding meaning.” The lack of sincerity and a dissonance between inner self and outer deeds in the pious performance is actually a common concern for Muslims when they pray or fast.⁷ In a similar way, Sufism cannot be a “non-prescriptive discourse” when the spiritual journey of the Sufi disciple consists in performing regulated acts of devotion (known as the *wird*) prescribed by the Sufi sheikh (see chapter 3). In other words, the question as to whether jurisprudence (or any other discipline) imprisons knowledge and the self into pre-determined limits and closure cannot be answered a priori, as the meaning of jurisprudence is not already given in juridical discourse but is co-produced by the conditions and forms of its transmission, enunciation, and reception by both producers and receivers of knowledge.

Hence, there is not necessarily a “contradiction” between jurisprudence and other genres. The notion of “contradiction,” a leitmotif throughout *What is Islam?*, is not the most relevant way to characterize distinct Islamic forms of engagement with the revelation. The other genres mentioned by Ahmed in opposition to jurisprudence—Sufism, *kalām*, philosophy, and ethics—are rather distinct knowledges shaped by different objects, languages, and sets of evidence to sustain their truth claims. Take for example the status of philosophy as a discourse of truth that was debated from the perspective of Islamic jurisprudence. The community of jurists never came with a single response, but included both those who condemned philosophy and those who endorsed it. Yet even those, like Ibn Taymiyya and al-Ghazali, who wrote polemically against the philosophers, actually practiced philosophy with the most comprehensive reviews of philosophical thought of their times, calling for a detailed refutation. The same intertwining of disciplines is true with Islamic philosophers. Ibn Rushd’s *Faṣl al-Maqāl*, dealing with reason, philosophy, and revelation, is actually a fatwa. The philosophers developed their thinking about the world and the divine while giving their due place to shari‘a,

and to *fiqh* as a form of knowledge necessary for the grasping and conveying of revealed truth, and for the life of the community.

These disciplines' distinct objects inform both the limits of what can be known from their respective perspectives and their intertwinement. Jurisprudence's main object is the self's (bodily) deeds, framed by the materiality of textual evidence and textual practices assuming the "unseen" (*ghayb*) and the inner self without delving into it. Sufism deals with the inner self, and while it can rely on textual and bodily practices, it develops the abstract and experiential knowledge of, and access to, the immaterial unseen (of both inner self and the divine).

Hence, as I will show below, when al-Ghazali (extensively quoted by Ahmed) wrote *Ihyā' 'Ulūm al-Dīn*, he was offering a spiritual topography of the self and expanding the meaning of worship through and with jurisprudence and its regulation of bodily acts of worship, notably the act of prayer, *ṣalāt*. Al-Ghazali, who was also a jurist and the author of the influential *Mustaṣfā min 'Ilm al-Uṣūl* dealing with the sources of jurisprudence, worked within and beyond the limits of jurisprudential knowledge to expand those limits within the sphere of shari'a knowledge and with the help of other forms of shari'a knowledge, notably the "knowledge of the hearts" (*fiqh al-qulūb*), that is, spiritual practices.

In the following pages, I will explore more closely al-Ghazali's and Ibn Khaldun's writings as they open up the possibility of further developing the spiritual topography of the self in relationship to shari'a and jurisprudence that also informs the Islamic present and practices of contemporary Sufi brotherhoods studied in chapter 3. If al-Ghazali is the most well-known scholar in the Sunni Sufi tradition, other classical scholars preceded him, notably Al-Harith Bin Asad al-Muhasibi (d. 857 CE, author of *al-Ri'āya li-Ḥuqūq Allah*); Abu Talib al-Makki (d. 996 CE), author of *Qūt al-Qulūb fī Mu'āmalāt al-Maḥbūb*; Abu Nasr Saraj al-Tusi (d. 988 CE), author of *Kitāb al-Luma'*; and Abd al-Karim al-Qushayri (d. 1073 CE), author of the *Risāla al-Qushayriyya*.

They produced and circumscribed a knowledge distinct from the *fiqh*, and yet related to it, whose purpose is to make Muslims live the rules derived from shari'a through an exploration of the "inner" (*bāṭin*) located in the "heart" (*qalb*). The language relied on by these scholars shaped the spiritual topography of the self with references to *bāṭin*, *qalb*, *nafs* (soul and self), and *rūḥ* (spirit), understood as what cannot be grasped materially, and entailing a series of distinctions between *bāṭin* and *ẓāhir* (inner/outer) or between *qalb* and *jawāriḥ* (heart/limbs).

FAITH, INNER SELF, AND JURISPRUDENCE: THE KNOWLEDGE OF THE HEART

Abu Talib al-Makki's *Qūt al-Qulūb fī Mu'āmalāt al-Maḥbūb* (*The Nourishment of Hearts in Dealing with the Beloved*) contributed significantly to shaping the

language that al-Ghazali relied on in his *Ihyā'*. Al-Makki, like al-Ghazali later, posits a distinct knowledge dealing with "the heart's actions" and the way it should "behave" in relationship to God. This knowledge is not separated from the rules and obligations prescribed by the *fiqh* but rather builds on it, for the good scholar is the one able to know both God's injunction (*amr*) and God himself ('*ālim bi-Allah*).

This duality of knowledge, spiritual and jurisprudential, is reflected in al-Makki's exploration of the relationship between *islām* and *īmān* (faith), and between the science of the inner and the outer.⁸ If *islām* consists in performing the five pillars prescribed by the *fiqh*, then *īmān* includes beliefs involving the unseen world. This distinction between, and intertwining of, *islām* and *īmān* is formulated in the famous hadith of *Jibril* (Gabriel): "What is *īmān* (asked the archangel)? It is faith in God, His angels, His prophets, the resurrection after death, the judgment day, and destiny, both with its good and its evil. And he asked again: what is *islām*? He (the Prophet Muhammad) mentioned the five obligations."⁹

For al-Makki, if an individual is performing the acts of *islām* externally (*ẓāhiruhu*) without binding ('*uqūd*) them with faith in the unseen world (*al-īmān bi-l-ghayb*), he is a hypocrite, only imitating the community. Yet, if an individual believes in the invisible (*ghayb*) without performing the rules of faith (*īmān*) and without following the jurisprudence of *islām*, he is a disbeliever (*kāfir*) who is not attached to the unicity of God. *Islām* and *īmān* are like "the heart with the body," for they are "not separable from each other." No inner *īmān* is possible without an outer *islām* (*lā īmān bāṭin illa bi-islām ẓāhir*), for *islām* is the "outer" (*ẓāhir*) of *īmān* (faith), and is related to the acts of the limbs, and *īmān* is the "inner" of *islām* (*bāṭin al-islām*) and refers to the acts of the heart (*a' māl al-qulūb*).

In order to work toward the unity of *islām* and *īmān*, Muslims should follow the teachings of the science of faith ('*ilm al-īmān*), which overlaps with the science of certain beliefs ('*ilm al-yaqīn*) and the knowledge of God ('*ilm Allah*). The scholars of worldly life ('*ulamā' al-dunyā*) dealing only with the outer (*al-ẓāhir*) do not have access to this science, which is known and practiced by the scholars of the hereafter ('*ulamā' al-ākhirā*) who developed the science of the inner (*al-bāṭin*) and the heart's actions (*a' māl al-qulūb*). This dual knowledge of the inner and the outer recovers the meaning of the shari'a according to al-Makki, for the latter should be understood as "the clear, straight and large path," the encompassing path "integrating and gathering all the paths."

The exploration of the inner should lead to a better knowledge of the evils of the self (*āfāt al-nufūs*) in order to act upon it in an internal struggle (*mujāhadat al-nafs*). This knowledge is the precondition of good intent (*al-niyya al-ṣāliha*), which is itself the prerequisite of any good act (*al-'amal al-ṣāliḥ*). Here, intention is not only associated with the acts prescribed by the *fiqh*, but with all kinds of acts: eating, drinking, wearing clothes, and even sleeping. For intent refers both to the

intention to do the act (as it is understood in the usual legal perspective of the *fiqh*), and to the pure and sincere (*ikhhlās*) dedication of the heart to God and His face.¹⁰ From this perspective, the acts, like the body, have a spirit (*ruh al-‘amal*) given by intent, without which they would have no value, as al-Makki puts it in another book, *The Science of the Hearts*. If God, as the hadith says, “does not look at your appearances nor your acts, but looks at your hearts,” it is because He knows the unseen (*‘alam al-ghuyūb*) lodged in the hearts, and He has access to intent, understood as “the heart of the heart” (*qalb al-qalb*).¹¹

Al-Makki gave formal shape to the language shared among scholars of the first centuries of Islam versed both in Sufi spirituality and jurisprudence (*fiqh*) and paved the way for al-Ghazali’s scholarly and spiritual work in the *Ihyā’*. As with several Sufi scholars before him, at a time when the science of jurisprudence (*fiqh*) flourished, al-Makki recalls that spirituality requires a knowledge in its own right that should be distinguished from jurisprudence, even when the latter deals with acts of worship, but nevertheless remains intertwined with it. The “science of faith” (*‘ilm al-īmān*) or “the science of the hereafter” (*‘ilm al-ākhirah*) dedicated to the knowledge of “the hearts” and the “inner” self prefigured what al-Ghazali called in his *Ihyā’* “the science of the path to the hereafter” (*‘ilm ṭarīq al-ākhirah*) dealing with the same issues. Moreover, al-Ghazali’s later critique of “the scholars of worldly life” (*‘ulamā’ al-dunyā*) dealing only with “the outer (*al-zāhir*)” is not a critique of jurisprudence per se but rather of the way the jurists restricted themselves to a narrow understanding of Islamic duties. While al-Makki’s writings and his attempt to reclaim a distinct knowledge paved the way for al-Ghazali’s more ambitious enterprise dedicated to the spiritual topography of the self, both framed their work not as the establishment of a “new” knowledge but rather as an “old” knowledge faithful to the revelation and recalling the forgotten truth and meanings overlooked by most scholar-jurists of their time.

THE SOURCES OF JURISPRUDENCE AND THE LOGIC OF THE LAW

Al-Ghazali’s masterpiece *Ihyā’ ‘Ulūm al-Dīn* is probably the book of classical Islam that is the most widely read, taught and cited by contemporary Islamic scholars, and more generally by Muslims today.¹² In order to understand its task, one has to go beyond the simplistic categories and polar oppositions (*either* Sufi or jurist [*faqīh*]) drawn by some of the scholarship on Islam. Of course, one cannot deny the tension between the exoteric-legalistic and the inner-spiritual dimensions attached to the knowledge of shari‘a. But it is precisely this constitutive and productive tension between the outer (*zāhir*) and the inner (*bāṭin*) that animates al-Ghazali’s writing and needs to be explored with him in order to grasp how the “external” norm prescribed by *fiqh* is fully interiorized and lived by the believer.

Although al-Ghazali was a famous jurist whose works on jurisprudence are still widely relied on by contemporary scholars, *Ihyā' 'Ulūm al-Dīn* does not belong to the legalistic genres known as “jurisprudence” (*fiqh*) or “the sources of jurisprudence” (*uṣūl al-fiqh*). In the introduction to his main work on the sources of jurisprudence, *Kitāb al-Mustaṣfā*, al-Ghazali recalls that he dedicated much of his time to the writing of books of *fiqh* both in its branches (*furū'*) and its sources (*uṣūl*) before he turned to “the science of the path to the hereafter (‘*ilm ṭarīq al-ākhirā*)” and the knowledge of the unveiled secrets of religion (*asrār al-dīn al-bāṭina*),” notably in his books *Jawāhir al-Qur'ān* or *Kimyā' al-Sa'āda*.¹³ The *Ihyā'* should not be set apart from his jurisprudential works but is rather a way to go farther and deeper than the classical way of writing books of *fiqh* allows. At the same time, al-Ghazali did not change his way of writing books of *fiqh* after he wrote the *Ihyā'*, and remained faithful to the rules and categories of the genre. From this perspective, jurisprudence, the sources of jurisprudence, and the science of the hereafter are three forms of shari'a knowledge that should be considered in their intertwinement. While the *fiqh* formulates the rule to be followed, the *uṣūl* formalizes the procedural operations relied upon to extract the rule from the sources, and the science of the hereafter tells us how the rule should be performed, lived, and one may say, embodied, beyond its exteriority.

Like all works of *uṣūl al-fiqh*, *Kitāb al-Mustaṣfā* is dealing with the procedural operations needed to literally “extract” the shari'a rules from their sources (*adilla*). In contrast to books of *fiqh* produced by the different jurisprudential schools that include the rules to be followed by humans without making explicit the method through which one may infer them from their sources, *Kitāb al-Mustaṣfā* delineates the generative procedures that should be relied on by scholar-jurists when dealing with the Qur'an and the Sunna. The first part of the *Mustaṣfā* is devoted to the “science of logic” (‘*ilm al-manṭiq*), considered by al-Ghazali as a useful preparation for the subsequent parts of the science of the sources (‘*ilm al-uṣūl*), which include substantive developments on (i) the notion of rule (*ḥukm*), (ii) its evidences and sources (*adillat al-aḥkām*), (iii) the method of extracting it (*istithmār*), and (iv) the qualifications of the *mujtahid*.

Paradoxically, although the *fiqh* and its *uṣūl* point to the hereafter (*ākhirā*), their formal procedures do not leave room for the exploration of the invisible (*ghayb*), for they stick to visible texts such as the foundational sources (the Qur'an, the Sunna, the accounts of the consensus of the Companions of the Prophet and the scholars) in order to determine legal rules. In an episteme where textuality is the ground of truth, the rules of understanding a text and of differentiation between truth and falsity are secured by the science of the *uṣūl*, which makes explicit the formal rules of reasoning. It deals with the comprehension (*idrāk*) of singular nouns (*asāmī mufrada*) and draws between them relationships of negation-exclusion and affirmation-inclusion. The main task of the formal logic is to produce

definitions (*ḥadd*) that are also limits differentiating between categories of acts according to their imperative nature, and including not only the proscribed and the prescribed, but also the permissible, the likable, and the dislikable. The scholar with the rank of *mujtahid* has the latitude to formulate legal rules for cases for which there is no known categorical text (*naṣṣ qat'ī*), usually in the form of a legal opinion (*fatwa*), but the latter is expected to be related to and consistent with the original sources through analogical thought (*qiyās*).

To sum up, and in order to understand how, in the Islamic context, the law is distinct from and yet constitutive of humanity's inner life and ethics, let's keep in mind from al-Ghazali's conception of *fiqh* in *Kitāb al-Mustasfā* that knowing and following the law, as a reasoned construction derived from the foundational texts, does not give access by itself to what al-Ghazali calls "the path to the hereafter." It needs to be worked out, lived, and embodied by the worshipper. The *Iḥyā*'s task is precisely to show how this can be done. In other words, if one should know *how to find* the law, one needs also to know *how to live* it. That is why the *Iḥyā*' restates the importance of jurisprudence and is at the same time very critical of the way it was taught and practiced by several scholars of al-Ghazali's time.

THE KNOWLEDGE OF THE PATH TO THE HEREAFTER: RECLAIMING THE ORIGINAL *FIQH*

The important distinction between *fiqh* (jurisprudence) and *shari'a* should be reiterated here. In the classical epistemic context, *shari'a* is the distinctive element differentiating between various forms of knowledge. As a duty for the community and a responsibility of scholars (*farḍ kifāya*), knowledge includes the sciences of the *shari'a* (*'ulūm shar'iyya*) and the other sciences (*ghayr shar'iyya*). The sciences of *shari'a* encompass all the knowledge revealed and transmitted, not only by the Prophet Muhammad, but by all the prophets (*mā ustufīda min al-anbiyā*). While sciences such as magic and sorcery are harmful and should not be acquired, other sciences (medicine, arithmetic) unrelated to *shari'a* are nevertheless necessary for worldly life and its order.

If *shari'a* is the revealed law (and, Sufi scholars would add, the path to be followed by believers), then the knowledge of *shari'a* is the *fiqh*, or more specifically, the human knowledge produced about the *shari'a* is mediated by the discipline of *fiqh*. However, not all knowledge about the *shari'a* is limited to *fiqh*. For al-Ghazali, the four imams to which the four schools of *fiqh* are attached were true scholars of *shari'a* because they were not only scholars of the exoteric (*'ulamā' al-zāhir*), but also companions and disciples of the scholars of the esoteric (*'ulamā' al-bāṭin*). "The knowledge of the path to the hereafter" is part of "the knowledge of the *shari'a*" (*'ilm shar'ī*) by which the *shari'a* is the link between the Muslim and the invisible world (*'ālam al-ghayb*).

The *Iḥyā'* is a response to what al-Ghazali viewed as the perversion of *fiqh* that became an "exoteric" knowledge disconnected from its inner counterpart and instrumentalized by scholars-jurists to secure worldly positions. Al-Ghazali disapproves all forms of knowledge that are reduced to a pure legalism or to a mere rhetorical discourse of confrontation or seduction. He is very critical of a conception of *fiqh* that "made people believe that knowledge rests only in the legal opinion (fatwa) given . . . to solve disputes, or in its polemical use as an attempt to shine and to win a controversy, or in an embellished prose of a preacher (*wā'iz*) trying to seduce the public (*istidrāj al-'awām*)."¹⁴ When adopting a dry technical language, and dealing exclusively with judicial cases related, for example, to divorce, marital disputations, or commercial transactions, the *fiqh* makes the heart "stony."

Al-Ghazali is reclaiming the "original" and fundamental meaning of *fiqh* as a science dealing with the heart. For al-Ghazali, the *fiqh* was originally understood as the science of the hereafter, and the knowledge of the evils of the self (*āfāt al-nufūs*). The *fiqh* meant also the contempt of the worldly life, the intense aspiration to the grace of the hereafter, as well as the subjugation of the heart to fear. When, in the Qur'an, *Sūrat al-A' rāf*, 179, God talks about those who "have hearts with which they do not understand" (*lā yafqahūna bihā*) He is referring to the *fiqh*, not in the jurisprudential sense but in relation to the meanings of faith (*ma'ānī al-imān*).

Al-Ghazali is not denying the fact that, since its first occurrences at the time of Muhammad's prophecy, *fiqh* has referred to juridical knowledge and "the opinions about the rules regulating external deeds" (*al-fatāwī fī al-aḥkām al-zāhira*). Rather, he recalls that this first meaning was conflated with, and subordinated to, "the science of the hereafter" and "the rules of the heart" (*aḥkām al-qulūb*). As it was subsequently practiced by jurists, *fiqh* deviated from its original meaning, for the work of the heart and the science of the hereafter are not compatible with positions of "power (*wilāya*), judgeship (*qaḍa'*), prestige (*jāh*), or money."¹⁵ From this perspective, the *Iḥyā'* is an act of remembrance that gives a new life, a new presence, and a new actuality to the forgotten "sciences of religion."

As heirs of the prophets, the scholars can only follow their example and dedicate their work to the knowledge of actions (*'ilm al-mu'āmalā*), which includes, on the one hand, the exoteric (*al-zāhir*) science, in reference to "the actions of the limbs" (*a'māl al-jawāriḥ*) and the regulation of usages (*'āda*) and worship (*'ibāda*) delineated by classical jurisprudence (*fiqh*), and on the other hand, the esoteric (*al-bāṭin*) science, dealing with "the heart's actions" (*a'māl al-qalb*), its states (*aḥwāl*), and the soul's ethics (*akhlāq al-nafs*). It is this subdivision of the knowledge of actions that inspired the composition of the book according to four volumes: acts of worship (*'ibādāt*), usages (*'ādāt*), perditions (*muhlikāt*), and salvations (*munjiyāt*).

INTERIORITY AND EXTERIORITY AND THE LIMITS OF *FIQH*

What delimits interiority from exteriority from the perspective of *fiqh*? The exterior is what is visible to the eyes of the community's members (the scholar and those who can be witness of someone's deeds), or what can be heard by them. The visible/heard is also what is tangible and can be verified by the judge. The knowledge (*fiqh*) about shari'a was constituted on the basis of the ability of the eye and the ear of the community to (externally) assess the deeds of the Muslim. Yet this knowledge also shapes how the community could talk about deeds, differentiating what can be from what cannot be verified.

The construction of interiority and exteriority in *fiqh* is distinct from the relationship between acts of worship (*'ibādāt*) and social transactions (*mu'āmalāt*), for both involve "internal" and "external" acts. Several deeds prescribed by *fiqh* in prayer take place both in the "exterior" body and the "interiority" of the Muslim—for example, when she should utter in silence verses of the Qur'an or the *shahāda*, or the invocation (*du'a*). The assessment of the Muslim's deeds is also based on the "internal" intent, which is "exteriorized" in the social and reciprocal transactions (*mu'āmalāt*), for example in contracts.

In the case of prayer, it may be much more difficult to assess the deeds, for the inter-subjective relationship does not happen between two or more persons, but occurs between the worshipper and God, in this inner space of communication with Him. The construction of interiority (*bāṭin*) and exteriority (*ẓāhir*) is even more complex when one introduces moral qualities of sincerity, fear, and devotion in the act of prayer. Although the worshipper is repeating in his interiority Qur'anic verses or uttering invocations (*du'a*), he may do so as a mere way to conform to the prescribed rules. In this case, one may say that in his own interiority he is in a state of *exteriority* to himself and to the rule, unable to reach the path to the hereafter.

In this case, what are the limits of the scholar's knowledge? Can the scholar-jurist do more than give his opinion on external and visible acts? Al-Ghazali recalls that the scholar usually does not deal with "hearts, nor their secrets." When giving his opinion about the validity of one's prayer (*ṣalāt*), he sticks to its exterior conditions (*ẓāhir al-shurūṭ*). For example, the scholar agrees upon the validity of a Muslim's prayer, even if the latter's mind is absent throughout the act, thinking only of business and trade. Although reverence (*khushū'*) and heart's presence (*ḥuḍūr al-qalb*) are among "the hereafter's work" (*'amal al-ākhirā*), making the purely exterior act a good one, they are not dealt with by the scholar.¹⁶

In another passage, al-Ghazali discusses the presence of the heart (*ḥuḍūr al-qalb*) in relationship to the utterance of "God is the greatest" (*takbīr*) that rhythms the movement of the body in the prayer. Its absence during other moments of the prayer cannot be a criterion of its non-validity of prayer, as the consensual opinion

puts it. Here again, al-Ghazali recalls that the scholars “do not deal with interiority” (*lā yataṣarrafūna fī al- bāṭin*) nor the heart, nor the path to the hereafter, for they are interested in “the exterior side of the rules of religion” (*zāhir aḥkām al-dīn*) on the basis of “the exterior acts of the limbs” (*zāhir a’ māl al-jawāriḥ*). If the latter are the elements taken into account by scholars, notably when their task is to preserve order, the self’s interiority cannot be judged from the perspective of *fiqh*, for there can never be a consensus on it. Moreover, one cannot make of the presence of the heart in the whole prayer a necessary criterion for its validity, because people (*kul al-bashar*), except the very few, are unable to make it effective.¹⁷

HEART, BODY, AND ESTRANGEMENT THROUGH THE LAW: AN IMPOSSIBLE UNITY OF THE SELF?

The construction of interiority and exteriority is not limited to the external gaze of the scholar who decides on the validity of the act available to the sight but is also related to the way the worshipper lives his relationship to God. Although the scholar can talk about the interiority of the believer and prescribe acts to make him improve his ethics, he does not have access to it. However, interiority is veiled only for other humans, not for God, for Whom it can be unveiled and “exteriorized.” Hence, the worshipper is in a triple relationship of interiority/exteriority: toward God, the community, and himself.

The relationship between interiority and exteriority as it occurs in the self raises the problem of the unity of the latter, as a disunity may be displayed in the relationship between body and heart (*qalb*), in which the heart becomes estranged from the body. This risk of alienation is possible only because the heart is autonomous from, and yet tied to, the body. From this perspective, the whole *Iḥyā’* can be read as a phenomenology of the heart (*al-qalb*), for although the heart is the main site of interiority, it has its own deeds and can act in its own capacity. It is in this sense that the science of the hereafter is a knowledge of the deeds (*‘ilm al-mu’āmalā*), for only the heart is able to act toward and to know the invisible (*ghayb*), and to be receptive to divine presence. In the first chapter of the fourth volume of the *Iḥyā’* devoted to the explanation of the heart’s wonders (*‘ajā’ib al-qalb*), the human is honored to know God (*ma’rifat Allah*) with his heart and not with his body, for only the heart knows God (*al-‘ālim bi-Allah*), looks for (*al-sā’ila*), and acts (*al-‘āmil*) for Him.

However, the *Iḥyā’* is also an attempt to bring unity to the self, through the proper articulation between the deeds of both heart and body. The body’s limbs should not be autonomous from the heart but subjugated to him, and illuminated by the light coming from worship. Prayer (*ṣalāt*) is the most important time-space in which the tension between heart and body is displayed, and at the same time, overcome in the physical and spiritual proximity to God. The spiritual act is not

conceived independently from the physical one, for the Muslim is literally brought closer to God in the act of prostration (*sujūd*). As a hadith puts it, “the worshipper is the closest (*aqrab*) to God when he is prostrated,” or as the Qur’an, *Sūrat al-‘Alaq*, 19 says: “Prostrate and be closer” (*iqtarib*). The proximity to God is even visible on the body of the Muslim who performs his prayer: “Their marks (*simāhuhum*) are left on their faces as a trace of prostration” (Qur’an, *Sūrat al-Fath*, 29). These physical signs are in fact produced by “the light of reverence” (*nūr al-khushū‘*) rising from interiority to exteriority.¹⁸

The body’s movement in the prayer should go along with the “heart’s deeds.” If the Muslim performs the act of prayer in a state of heedlessness (*ghafla*), or if he is not able to liberate himself from “worldly thoughts” (*afkār al-dunyā*), he will not be able to follow God’s command: “Perform the prayer to remember me” (*aqim al-ṣalāt li-dhikrī*) or “Do not be among those who forget” (*wa lā takun min al-ghāfilīn*). Moreover, the prayer of the “heedless” (*ghāfil*) will not allow him to improve morally, for he will be in the same category of the Muslims described by the hadith: “those whose prayer will not prevent them from committing abominations (*faḥshā‘*) and reprehensible deeds (*munkar*) can only get farther from God.” This state of heedlessness is a moment of estrangement in which the body performs the prescribed acts independently from the heart.

The relationship between body and heart is related to the relationship of exteriority/interiority of the law and to the law. The heart’s estrangement from the body lies in the ambivalence of the law, which is, at first sight, available to people only in its external face and its immediacy. The internal dimension of the law is never immediately and fully accessible to the believer, but should be mediated by the work of the heart. At the same time, the worshipper should perform the prescribed rule both externally and internally, which gives the mere externality an inner life. The reconciliation of body and heart and the unity of the self in the law are never a permanent and secured state, but only an elliptic promise that may occur in a certain time-space.

Al-Ghazali’s concern for the ability of the worshipper to live the rule both externally and internally is reflected in the ambivalence of prayer. For each prescribed act attached to the conditions (*shurūṭ*) and pillars (*arkān*) of the prayer (*ṣalāt*) formulated by jurisprudence, there is a corresponding act of the heart. For example, when the worshipper hears the call to prayer, he needs to respond actively to it and make present in this heart the terror (*hawf*) associated with the Resurrection Day (*yawm al-qiyāma*). When he is performing the acts of purification (*ṭahāra*), he needs not only to clean his skin and his body’s members, but also his self (*dhāt*) and his heart (*qalb*) through repentance (*tawba*), for God looks at the inward (*bāṭin*). When the Muslim dissimulates the body’s awful parts (*ṣatr al-‘awra*), he needs also to think of inward (*bāṭin*) secrets and awfulness that are only known by God, and make his heart full of regret, shame, and fear.

The unity of heart and body reflecting the ability of the worshipper to live the law both internally and externally is an exceptional state, known by very few in the time-space of prayer, where they are able to reach a state of certainty (*yaqīn*). In this case, the worshipper is totally absorbed in a state of awe (*khushūʿ*) by his prayer, following the Prophetic examples in the hadith narrated by Aisha¹⁹ or in the Qurʾan.²⁰

For the heart to be co-present with the body, it needs to be available, free from all things that may orient a person in the wrong direction, and be a space for knowledge understood as the unity of words and action (*yakūnu al-ʿilm bi-l-fiʿl wa al-qawl*) occurring at the same time. Although thought may not focus exclusively on the prescribed words and deeds, the heart needs to be always remembering (*dhikr*) them. However, the heart may be present in the utterance of the word but absent as a site of meaning (*lā yakūnu ḥāḍiran maʿa maʿnā al-lafẓ*). When it goes along with understanding, the heart reaches the words' meaning, enabling the prayer to put an end to abominations and bad deeds.²¹

Following al-Ghazali, then, the rules derived from shariʿa are not only a mere set of external rules to be followed by the Muslim. They are first and foremost *lived* by the believer, performed and embodied *by* and *in* her. It is both a means leading to divine presence and an end in itself. The most important act of the shariʿa is the *ṣalāt* that instantiates divine presence and may be described as a movement of internalization of the external law. This internalization is at the same time a movement of opening to another world already present but not self-evident, not visible at first sight, and for which the body (notably the limbs, the eye, the ear, the touch) but also the heart need to be educated. Hence, the internalization also transforms the relationship of the worshipper to the world, inhabited and co-inhabited by the sensible and the spiritual, the visible and the invisible. The invisible may sometimes become visible to the eye of the believer, but its existence is beyond any doubt, and it is knowable if one acquires the proper ethical-practical knowledge. It is the latter that gives the worshipper access to the invisible reality.

It is also the *ṣalāt* that shapes the subject to perform other duties prescribed by the shariʿa, and to engage with others in inter-actions (*muʿāmalāt*) that belong to the sphere of the good. The relationship of the subject to the world is mediated through divine presence but also through the community. For it is recommended that the *ṣalāt* should be performed collectively in the mosque, and instantiate the link between the subject and others. Moreover, the instantiation of God's presence in the *ṣalāt* is at the origin of the Muslim sense of good and evil and sense of duty that are the conditions of possibility of the law. The *ṣalāt* is not only carefully regulated by the law, it is also the latter's condition of possibility in the consciousness of the subject. (On the centrality of *ṣalāt* and acts of worship and their implications in contemporary times, see chapter 6.)

THE INNER OF SHARĪʿA AND THE SELF

The centrality and primacy of the inner self over outer deeds in relation to shariʿa extensively explored by al-Ghazali is mirrored in Ibn Khaldun's thought, notably in his *Shifāʾ al-Sāʾil wa Tahdhīb al-Masāʾil*. For Ibn Khaldun, shariʿa's obligations (*takālīf sharʿiyya*) include both the outer and visible acts (*al-aʿmāl al-zāhira*) and the inner and invisible deeds (*al-aʿmāl al-bāṭina*). While the outer may include acts of worship and habitual acts (*ʿādāt*), the inner is associated with the heart and with faith. Yet, the inner (*bāṭin*) is the source and foundation of the good and evil for all actions. The inner has authority over the outer, whose deeds cannot materialize without the former's "acts," which include will, thought, and the character's traits—desirable traits like probity, generosity, patience, but also undesirable ones such as arrogance or envy. The primacy of the inner over the outer stressed by al-Ghazali and Sufi authors is reiterated by Ibn Khaldun as a reminder that any disconnect of the outer from the inner through which external deeds become a way to cultivate appearances is a form of idolatry (*shirk*).

This duality of inner self and outer deeds informs shariʿa knowledge necessary to fulfill happiness, encompassing the knowledge of the outer (*fiqh al-zāhir*) and the inner (*fiqh al-bāṭin*). The knowledge of the outer, known as "jurisprudence" (*fiqh*) and transmitted by the "people of fatwa," deals with bodily acts, including acts of worship and other habitual deeds (*ʿibādāt wa ʿādāt*). The knowledge of the inner is a knowledge of the hearts (*fiqh al-qulūb*), also called, following al-Ghazali and al-Makki, knowledge of the hereafter (*ʿilm al-ākhirah*) or Sufism (*taṣawwuf*). Although the knowledge of jurisprudence is distinct from the knowledge of the hereafter and of the heart, it is nevertheless required for the regulation of worldly life and the implementation of its rules is a prerequisite to reach the hereafter. There has been a historical divide between, on the one hand, the scholars of jurisprudence whose knowledge was necessary to rule the community and handle worldly matters and interests (*maṣāliḥ al-dunyā*), and on the other hand, the Sufis whose knowledge deals with the heart and the "goods of the hereafter." But the true shariʿa holders are actually holding the two forms of knowledge (*yakūnu al-faqīh ḥāmīlan lil-fiqhayn maʿan*), following the prophets' examples, as happiness can be realized only through the harmony of the inner and the outer (*ittifāq al-bāṭin wa al-zāhir*).²²

The duality of the inner and the outer within shariʿa (*lil-sharīʿa zāhiran wa bāṭinan*) is reflected in the way acts of worship and other legal obligations are fulfilled following a spiritual hierarchy that includes three stages mentioned in a famous hadith about the Prophet Muhammad's encounter with the archangel Gabriel: *islām*, *īmān*, and *iḥsān*. While *islām* is the first stage and includes the regulation of deeds in their outer expression by which the Muslim has met all the legal obligations (*suqūṭ al-taklīf bihi*), *īmān* entails developing the inner dispositions as

a way to reach harmony between the inner and the outer, and *ihsān* consists in reaching spiritual perfection.²³

As in al-Ghazali's *Iḥyā'*, the inner and outer of shari'a mirror the duality of the self that includes bodily senses (*haykal maḥsūs*) under the authority of a subtle spiritual-divine faculty (*laṭīfa rabbāniyya*) known in the revealed law as spirit (*rūḥ*), heart (*qalb*), intellect ('*aql*), or soul (*nafs*). Originating in the spiritual world ('*ālam rūḥānī*'), it navigates worldly life through knowledge, and acts in it through the body against the two poles of good and purified deeds, and evil deeds. On its path to accomplishment and completeness, the spiritual faculty acquires knowledge of the worldly life while relying on the bodily senses grasping the realities and enabling the production of images in the imaginary (*intiḍā' šuwar fī al-khayāl*).²⁴ Meaning is extracted from those images and assembled and ordered through the analysis and synthesis of thought (*tarkīb wa taḥlīl*).

Besides acquired knowledge ('*ilm kasbī*') available to ordinary humans, inspired (*ilhāmī*) knowledge mentioned in the Qur'an (*Sūrat al-Kahf*) is exemplified by saints and attested by affects (*al-taṣḍīq bihi wijdāniyyan*) and visions (*ru'ā*). While those two forms of knowledge enable the self to reach and live the spiritual truth, the inspired knowledge is an emanation of the Preserved Tablet (*al-lūḥ al-maḥfūz*), which is a record of God's plan for creation, including all the truths of the past, present, and future, and is a mirror of the creatures' images. Although there is a veil between the spiritual faculty and the Tablet, it can be unveiled on certain occasions, allowing acquired knowledge to get closer to the truth to which inspired knowledge has access.²⁵

The search for happiness guided by God's face (*al-naẓar ilā wajhi Allah*) relies on the spiritual faculty. Other forms of knowledge, such as grammar or jurisprudence, can only give a glimpse of the "tasty pleasure" ('*ilm ladhīdh*') associated with the search of God's face and the secrets of the spiritual world. These are higher than more prosaic intellectual exercises. This quest cannot do without the continuous effort to know God in the worldly life through the acquisition of knowledge that can lead to the unveiling (*raf' al-ḥijāb*). The most persistent veil between the self and the happiness of the hereafter (*sa'āda ukhrawiyya*) is the body that can be fully removed only after death (*irtifā' ḥijāb al-badan wa zawāl māni'ih*). While the body is a reality of the worldly life that can impede access to the truth, the self can move forward in her spiritual journey to the extent that she is defeating the body, its needs, and its inclinations in the worldly life. The purification of the heart occurs when the soul has put an end to all its ties with the body (*qaṭ' jamī' al-'alā'iq al-badaniyya*).²⁶ Paradoxically, the self should aim for the hereafter while still living the worldly life; the former is a life abstracted from the materiality and physicality of the body, which is only to sustain the soul and its spirituality dedicated to the search for God's face.²⁷

The unveiling knowledge (*ma'rifa kashfiyya*) is actually a continuous effort and struggle that takes the self as its object (*mujāhada*), instantiated in distinct and

gradual forms dealing first with external deeds, second with the education of the soul on the basis of spiritual exercises domesticating worldly appetites and inclinations, and third with the unveiling proper bringing the soul to a state, after death, able to receive inspired knowledge. Ibn Khaldun mentions several spiritual exercises prescribed by Sufis “to kill” the body and all human faculties except the intellect. Those exercises, keeping the soul alive, include fasting and rituals of “remembrance” (*dhikr*), consisting in the repetition of the sentence “there is no god but God alone” (*lā ilāha illa Allah*) while sitting in isolation in a dark place.²⁸ It is this relationship between embodiment and *dis*-embodiment, and between knowledge and the self, that I will discuss further in the following chapter, in conversation with the anthropology of Islam.

Truth of the Law, Truth of the Self, and Dis-Embodiment

One way to continue our inquiry into spiritual ethics developed in the two previous chapters is to look for the good in Islam: where is the good located? The revealed law (*shari'a*) is in itself the site of the good, for it has its sources in the revelation, which includes the words of God (the *Qur'an*) and the Prophet's sayings and exemplarity (the *Sunna*). Although the good is enclosed in the revelation and disclosed to the humans through prophecy, oral transmission, and later textuality, it calls for a continuous work of truth-seeking. To look for and formulate the truth of the law is to delineate the good to be followed by the individual.

The *Qur'an* and the *Sunna* articulate the differentiation between the good and the wrong via a narrative of God's intervention in the world. Here, the good does not merely take the form of prescriptions or proscriptions, but includes also a cosmogony instituting an order to the universe, as well as stories giving meaning to human existence and constituting a source of moral exemplarity.

Looking for the truth in the foundational texts following the procedures relied on in *shari'a*'s knowledges is also a way to have access to the good, for the truth *is* the good. The very event of the revelation is itself a foundational truth and tells us that all we need to know about existence and the order of the world. However, it is not only a contemplative truth that has been revealed to us, but also a practical one that tells us how to live in the world. As the words of God, the truth is a blessing and is necessarily good. To look for the truth in the revealed law means to look for the good that will guide individuals as well as the community in the practical life.

This relationship between the truth and the good, and between knowledge and ethics in Islam, is in tension with modern thought, which has been based on the divorce of the two at least since Descartes. As such, truth in modern science is not

the site of the good but is “value-neutral.”¹ It may allow us to better understand nature or the human, but it does not tell us how to live a good life in the world. In line with modern science, contemporary Western law regulates behaviors and protects interests. It is not tied to a foundational text or event revealing to us the truth-good, nor does it tell us how one should live ethically. In Islam the primal truth is already given in the foundational texts and needs to be disclosed following hermeneutical procedures, while in modern thought the truth is not given or located in a text but produced by the subject following the exclusive rules of sovereign reason.

Although the good-truth has been made manifest through the revelation and the scholars’ subsequent work, this does not make the community and its individuals good in itself, but requires deeds from them. Yet these deeds are “external” and part of the “exoteric” (*al-zāhir*), and should be related to the self’s inner life (*al-bāṭin*). It is in this relationship between the inner and the outer that the space of spiritual ethics is shaped. Building on chapters 3 and 4, this chapter explores what the constitution of a space of spiritual ethics does to the Muslim self. I begin with a critical discussion of the conceptual use of embodied practices in the anthropology of Islam, requiring a new conceptualization of self-formation, and show that it cannot be set apart from the status of knowledges, disembodiment, and the inner self in Islam.

INNER SELF, (DIS-)EMBODIMENT, AND THE ANTHROPOLOGY OF ISLAM

Informed by Talal Asad’s critical conceptual work in the anthropology of religion and the secular, recent anthropological studies have focused on ethics and self-formation in contemporary Muslim societies. In conversation with both scholars of anthropology and gender studies, Saba Mahmood’s influential *Politics of Piety* questions liberal assumptions about a cross-cultural universal desire for freedom-as-autonomy through a study of how participants in the women’s mosque movement in Cairo achieve virtuous conduct and their potentiality as selves submitting to “external authority.” This submission is also an embodiment of norms requiring the extensive study of embodied micro-practices attached to the act of prayer (*ṣalāt*), attentive to the ways in which norms are inhabited and performed with distinct emotions by women attending the piety circles. *Politics of Piety* is an important anthropological contribution to the study of the ways in which the self can be shaped through a heteronomy entailing bodily practices and discipline. Unlike Mahmood’s subsequent work, *Religious Difference in a Secular Age*, which is interested in the pervasiveness of secularism and secularization, its ethnography shows that modern-secular transformations did not put an end to Islamic forms of life but rather how the Islamic tradition can be very much alive, lived, and enlivened by its practitioners in modern settings.

However, the book leaves unattended important questions central to Mahmood's argument. If indeed embodiment and bodily practices are central in Islamic pious practices, does this mean that, as Mahmood argues, the body prevails over the inner self in the formation of the Islamic pious self? While *Politics of Piety* focuses on the women's mosque movement in Cairo in the 1990s, it is also making broader claims about the filiation of pious practices to the "Islamic discursive tradition." Drawing on Asad, Mahmood explains extensively what she means by "discursive tradition" and stresses that tradition is not "an unchanging set of cultural prescriptions" nor "a historically fixed social structure" but is "a mode of discursive engagement with sacred texts" informed by the practical conditions of their transmission and interpretation in specific time-spaces, notably "the context of power relations . . . under which textual authority is invoked." While the women Mahmood worked with "understood their activities in terms of a recuperation of a set of traditional practices they saw as grounded in an exemplary past and in classical notions of Islamic piety," their "adaptations of classical Islamic notions did not mirror their historical precedents, but were modulated by, and refracted through, contemporary social and historical conditions."²

In her discussion of the relationship between inwardness and outwardness in pious practices and the formation of virtuous selves in which "external performative acts (like prayer) are understood to create corresponding inward dispositions," Mahmood underlines that "this Aristotelian understanding of moral formation" informs the work of Islamic thinkers such as al-Ghazali, Miskawayh, Ibn Rushd, and Ibn Khaldun. She adds that this understanding (rendered as *malaka*) "continues to live within the practices of the contemporary da'wa movement in Egypt. It is evident in the frequent invocation of Abu Hamid al-Ghazali's spiritual exercises and techniques of moral cultivation, found in popular instruction booklets on how to become pious, and often referred to in ordinary conversations within the da'wa circles." In other words, the status of outer behavior in relation to inner self formulated by Mahmood is constitutive of the Islamic discursive tradition. Yet, while the notion of habitual exercise is certainly important as part of the fulfillment of pious obligations, it does not mean that the linear relation between outer behavior and inner self—interpreted by Mahmood as an indication of the primacy and priority of outwardness over inwardness in the constitution and architecture of Muslim selfhood—is true.

Actually, as shown in chapters 3 and 4, the relation between inner self and outer deeds is a central and recurrent theme of classical Islamic works dealing with ethics, spirituality, and the self. The two major authors quoted by Mahmood, al-Ghazali and Ibn Khaldun, extensively developed the knowledge of the inner self (*nafs*) attached to the heart (*qalb*), spirit and soul (*rūh*), and intellect (*aql*), which is distinguished from and yet related to jurisprudence dealing with outward bodily behavior. Both al-Ghazali, in *Ihyā' 'Ulūm al-Dīn*, and Ibn Khaldun, in *Shifā'*

al-Sā'il wa Tahdhīb al-Masā'il, deplore the disconnect between outer deeds and inner self and the performance of bodily acts without corresponding meaning and inner states. Most classical scholars have warned against performing prescribed acts, notably worship, as a way to be perceived as pious by the community. Condemning the exclusive focus on external behavior by jurists of his time and the mistaken reduction of shari'a knowledge to jurisprudence and the mere regulation of bodily deeds, al-Ghazali delineated the topography of the inner self in relation to the knowledge of the (path to the) hereafter (*'ilm al-ākhirā*), and the inner (*bāṭin*) of shari'a. In this episteme, there is a clear hierarchy between inner self and the body, as the inner self comes prior to and is higher than the body. The body is an obstacle, a veil impeding and obscuring the self's spiritual journey and search for God's presence. In other words, the formation of pious selves is also inscribed in a desire and horizon of *dis-embodiment*.

As a result, the study of the formation of pious selves in Islamic context cannot be limited to the acts performed by the body but requires a problematization of the relation between bodily deeds and inner selves, between embodiment and disembodiment, relating to the ways in which it was framed and discussed by classical Islamic scholars. As Mahmood does not explore further the question of the inner self and disembodiment among participants in the women's piety movement, the primacy and priority of bodily acts over the inner self remains the interpretive conclusion of the author rather than what is attested by the participants and classical authors mentioned in *Politics of Piety*.

The relation between inwardness and outwardness in *Politics of Piety* is also obscured by the recourse to the generic notion of "social norms" instead of analyzing the implications of the recourse to a specific form of knowledge, that is jurisprudence (*fiqh*), for the ways in which piety is embodied or disembodied. Mahmood stresses that "the distinction between the subject's real desires and obligatory social conventions—a distinction at the center of liberal, and at times progressive, thought—cannot be assumed, precisely because socially prescribed forms of behavior constitute the conditions for the emergence of the self as such and are integral to its realization."³ She indeed shows how acts of worship regulated by Islamic jurisprudence are embodied by participants in the women's mosque movement who are attentive to outward expressions of religiosity. However, the distinction between social norms and conventions on the one hand, and jurisprudence on the other, is important. The two should not be conflated here because this very distinction is necessary in the analysis of how rules regulating worship are inhabited by members of the pious circles and the type of authority to which they submit.

In the third chapter of *Politics of Piety*, Mahmood recalls how *fiqh* manuals detailing "the rules and regulations governing the performance of religious rituals and observances (*'ibādāt*)"⁴ are vehicles of scholarly discourse, informing pious circles through modes of argumentation and citational practices deployed during

the lessons and discussions between participants. Yet she does not raise the question of whether the very nature of knowledge taught in those scholarly circles already determines the emphasis on outward bodily practices. It is precisely the business of Islamic jurisprudence (*fiqh*), a highly formalized form of knowledge, to prescribe bodily acts to be performed by each individual, acts that can be seen and, if needed, assessed by the community. In other words, there is an embodiment already inscribed in the type of knowledge transmitted in those circles as the act of prayer (*ṣalāt*) is regulated in Islamic jurisprudence as a series of micro-deeds, speech acts, and movements of the body that are inhabited by each worshipper.

The distinction between “social norms” and “jurisprudence” is also important in the discussion of Islamic in contradistinction to liberal conceptions of ethics, for example when taking into consideration the notion of “sincerity” mentioned as a key disposition among participants in *Politics of Piety*. Mahmood, referring to her conversation with two interlocutors, contrasts Islamic and liberal positions regarding the simulation of outward pious behavior: “Amal does not regard simulating shyness in the initial stages of her self-cultivation to be hypocritical, as it would be in certain liberal conceptions of the self where a dissonance between internal feelings and external expressions would be considered a form of dishonesty or self-betrayal (as captured in the phrase: ‘How can I do something sincerely when my heart is not in it?’)”⁵ Sincerity in the act of prayer, and more generally all acts of worship (fasting, almsgiving, pilgrimage) should not be interpreted as a mere expression of liberal sensibilities, as the theme is actually recurrent in classical and contemporary Islamic scholarship in which the notion of *riyāʾ* (hypocrisy) derived from the root *ruʾya* (vision) refers to the motives behind the pious acts and whether they are performed only to be seen and praised by others instead of being done exclusively for the sake of God, a matter that can only be known by the inner self and God, and can be addressed only by the inner self. For classical scholars like al-Ghazali and Ibn Khaldun, this discrepancy between inwardness and outwardness calls for a knowledge of and work on the inner self to bring unity to the self.

The introduction of jurisprudence as a specific knowledge attached to shariʿa in the study of self-formation in Islam opens up a different analytical perspective related to the relation between law, in its various cultural instantiations, and bodies in the modern and “secular” context described in *Politics of Piety*. Mahmood underlines that the central trait of Islamic piety disrupting secular sensibilities is the outward and bodily expression of religiosity unauthorized by the state (manifested by the bodily practices of participants in the piety circles). However, it is relevant to bring in here the shifts informing the modern concept of law and the constitution of a polity where sovereignty manifests itself through the monopoly over the formulation of *the* law, excluding the possibility of other juridical regimes (notably canon law in Christian Europe). As I show in chapters 10 and 11, one of the major changes informing the constitution of law as a conceptual category and

an institutional reality in Europe, and its cross-cultural circulation, is the shift from salvation of souls to survival of bodies, exemplified by Hobbes's *Leviathan*. The concomitant formation of state power developed the main object of law as the regulation of bodies and their interaction with other bodies to preserve individual bodies from violent death and ensure the integrity and continuity of the body politic. It is this conception of law that informed colonial state intervention in Egypt and other Muslim countries where the colonial project, unlike the colonization of America driven by the conversion of souls, was taking shape through, and being shaped by, the law dealing with the administration of bodies and things rather than inner selves. Women's piety, in its outward bodily behavior, is a problem for the modern state not only because the latter endorses privatized rather than public forms of religious practice, as Mahmood put it, but, most important, because this bodily conduct submits to a distinct and decentralized juridical regime (Islamic jurisprudence), disrupting the state's monopoly over both law production and the regulation of bodies.

KNOWLEDGE OF THE LAW AND KNOWLEDGE OF THE SELF

The study of self-formation in Islam requires, as mentioned in my critical discussion of Saba Mahmood's *Politics of Piety*, the conceptualization of the relationship between Islamic knowledges and the constitution of selves, between inner self and outer deeds, and between embodiment and disembodiment. To begin with, Islamic spirituality is grounded in, and intertwined with, shari'a. One needs to first know the truth of the law in order to know the truth of the self. For it is in the gap between what is expected from the self by the law and what the self *is* that the work on internal states takes place. The revealed law (shari'a), rather than mere jurisprudence (*fiqh*), sets for the self an ideal *of* and *for* the self that can be contrasted with the actual self, and opens up a space *of* and *for* inner life. But exploring the inner life is not only a matter of personal will, and the individual cannot just act ethically guided by his own judgment only because he wants to do so. Rather, there is a specific knowledge, the science of ethics, that has been constituted by, and inherited from, classical Islamic scholars on the basis of the Qur'an and the Sunna, and transmitted over generations. Although it is associated with the inner life of the individual, spiritual ethics may be taught and learned. Contemporary Islamic scholars may introduce the self to the language of interiority and guide it in the task of improving ethically, as they enlighten the self regarding the rules prescribed by the revealed law. However, if one can read from books of ethics or learn from contemporary scholars, it is not a contemplative knowledge, but a transformative knowledge that needs to be put into practice and lived by the believer.⁶

What kind of knowledge is the science of spiritual ethics? It is a knowledge that arises out of the revealed law, it is part of shari‘a knowledge, and yet it is not a legalistic/juridical knowledge formulating specific rules of action in the form of prescriptions or proscriptions. Rather, it is a knowledge of emotional states and states of mind that do not validate or invalidate the Muslim’s deeds from a legal perspective, but are nevertheless related to the revealed law in several ways. They are “internal” states that go along with “external” deeds as they have been prescribed by Islamic jurisprudence, and they are grounded in the foundational texts. The spiritual topography that one may find in the science of ethics is not separated from the law but is rather entwined with it. Whoever puts this knowledge into practice without any consideration for the law runs the risk of falling into unlawfulness and sin. But merely performing the deeds prescribed by the law without any work *on* and *of* the heart may only lead to a life without spirit.

As such, the rules formulated by the discipline of *fiqh* do not constitute a space for the internal life of the Muslim, for they deal with her external deeds. One may perform the deeds prescribed by the rules mechanically, without involving any work on internal states. Although this may be valid according to jurisprudence, the person’s life may lack spiritual richness and ethical accomplishment. Yet, despite the fact that it is insufficient by itself, following the rules formulated by jurisprudence is a necessary condition for acting ethically.

The work of ethical practice presumes a disharmony between inner and outer self, between heart and body, and consists in producing a unified self. If the harmony between internal states and external deeds was already given, there would be no space for ethical transformation. While only the self and God know the extent to which there is a gap between the inner and the outer in the individual’s behavior, others do not have access to his/her interiority, and interact only with what is “visible” to them. From this perspective, the dichotomy between internal states and external deeds overlaps with another dichotomy, between inner self and social self. In several situations, the social self may convey an image of moral rectitude to the community, while the inner self is performing exemplary deeds without involving his heart, for example if he does not believe in what he is doing and is acting only out of interests.

The work of ethical practice raises questions about the self’s own motives for performing an act of worship or a social interaction. The self may be asking, “Am I doing the prescribed act for God or in order to have a good image of myself in others’ eyes?” This question is related to the ability to discriminate among motives and internal states. I should be able to tell my inner self the truth about myself in a moment of duplication of the self that allows me to look truthfully at myself in relationship to a deed. These questions about the motives are also related to the end toward which I am acting: “Am I de-centering myself and orienting my action toward God, or am I prisoner of myself and my own appetites and interests?”

Acting ethically lies in the paradoxical ability of the self to get out of itself in order to act for God. In ethical practice, the self is less negated than subjugated to God. Although the self needs to be posited in order to make this kind of practice possible, it is not a self-autonomous and atomistic self. Nor is it a relationship of unity with God, for this would violate the fundamental principle of God's unicity, and would make the individual fall into heresy (*zandaqa*). Rather, acting ethically entails a self who is itself embedded in the relationality with God. The revealed law, both in its juridical and spiritual dimensions, embodies this relationality in specific deeds and internal states disclosed by the foundational texts and the trustworthiness and authorized community of scholars. Here, the truth of the self does not lie in the egotistic and disengaged self (for example the Cartesian self) but rather in the relational self tied to God with the revealed law.

The notion of sincerity captures a central dimension of the inner state that needs to go along with the self's deeds, and exemplifies the relational self. Inaccessible to others, the self's sincerity is yet relational, for it should reflect the exclusiveness of the self's relationship to God, Who cannot be associated to anything else. It raises the question of the self's ability to see the truth about himself, and to tell it to himself in order to correct his internal state. The self may be asking: "Am I doing this good deed because I am expecting a worldly benefit in return (such as being considered a good person in the eyes of others), or am I doing it only for God?" Here, ethics does not lie in the nature of the deed itself but rather in the combination of the deed with an intent exclusively dedicated to God. Paradoxically, while the deed needs to be posited first to make any ethical judgment possible, it becomes secondary, subjugated to the self's intent. It is the latter that enables the relationality between the inner self and God in a situation of action, which entails another relationality, between the inner self and the external deed he is performing.

DOING AND BEING

As we saw earlier, the discussion about ethical practice in Islam should be raised in relationship to the question of the unity of the relational self, for the deeds of the self's body may be in disharmony with his thoughts and inner state. There may be two kinds of disharmony: the self may perform the deeds prescribed by the law only because of constraint or fear of worldly sanction, or the self may want to perform them, but not for good reasons. In the first case, although the self does not want to act in conformity with the law, he is still performing the prescribed deeds in the midst of an internal struggle between his will and his body. In the second case, the self is willingly applying the law, and he can even find a pleasure in the required actions, but his will is not oriented toward them for good reasons. Because of this, all the work around the inner self delineated by the science of ethics deals

not only with the orientation of the will in order to make the self desire what the law prescribes, but deals also with *the motives* of the will and their purity. The self needs not only *to act* outwardly in accordance with the law, but needs also *to be* in a certain inner state. That is the reason why the language of jurisprudence relies almost exclusively on verbs of action (*'amal*), while the language of spiritual topography is all about states (*aḥwāl*). The science of jurisprudence requires from the self to do, while the science of ethics expects the self to be. Yet, although distinct from each other, their truth is achieved only in combination. It is in the deed, in a specific situation involving appetites, interests, worldly desires, and temptations that the inner state reveals itself to the self in its ability to produce pure motives on the basis of which his will is enabled. Now, of course, doing and being as related to jurisprudence and ethics are not mutually exclusive, and several classical and contemporary Islamic scholars have talked about the “deeds of the heart” (*a 'māl al-qalb*) to emphasize the fact that a state, a way of being, may be produced by the self and are not immediately given to him. Moreover, a state is paradoxically all but permanent, for it requires a continuous work of shaping involving “inner” deeds.

Obedying the revealed law and doing whatever is commanded is necessary for whoever wants to be good. Subjective ethical practice starts at the moment the self is asking questions about his relationship to the revealed law: “Should I follow the law or not? Am I following the law?” The very act of obeying or disobeying the law entails an ethical judgment about the self’s deeds. Hence, the rules formulated by Islamic jurisprudence are not ethical or legal in themselves. Rather, the relationality the self may have with the rules creates a social space in which his actions are seen and judged by others, as well as a space for the inner self to reflect upon his deeds in the world. Merely doing what is prescribed by the law may be good in the eyes of others but does not make *me* good. An important difference should be introduced here between *doing the good* and *being good*. Jurisprudence enjoins the self *to do*, but it does not tell the self *how to be* (in general); neither does it tell the self how to be while performing the prescribed deed (in a specific context). The deed acquires in the social world a visibility and an objectivity that makes it autonomous from the self, such that it may be considered good in the eyes of the community. But the science of ethics takes the self back to the inner and relational self to reflect upon the goodness of the self in relationship to the deed, and more generally, upon the self as being in-the-world.

The law formulated in Islamic jurisprudence gives the self a kind of “standard” of ethical behavior, through which the self (or the Islamic scholar) can assess his own deeds. The work of ethics opens up the possibility of doing more than the legal obligations, and may be an open-ended work requiring recommended and superogatory acts which are also part of the lawfulness of Islamic law. However, all the good deeds that the self performs are not necessarily part of a way of *being* ethical, for the self may be considered a “good” person in the eyes of others but not

for God, because only God knows the inner self. Hence, the self needs to be guided by the following questions: “What is happening in my inner self when I am achieving good actions? What is my intent? What are my expectations when I am doing them?”

The distinction between doing and being raises again the question of the unity of the self. As part of the sciences of the shari’a, and as related to the deeds prescribed by Islamic jurisprudence, the science of ethics allows the self to think himself in his unity, in which being encompasses both his internal states and his external deeds. Yet, it is life, understood as the continuous dis-unity between the disembodied inner self and the social-embodied self, that calls for an open-ended work of shaping their unity. It presumes that the inner self and his external deeds, mind and body, are autonomous “spaces” that are not naturally in harmony with each other. From this perspective, ethics is not only a work about internal states related to the self’s deeds, but opens up the possibility of producing a unity of the self in the very moments of thought, emotion, and action.

The science of ethics is also a reminder that the self is accountable not only for her deeds before humans but also for her thoughts and emotions before God. The very act of addressing the self contained in the revealed law, either in the Qur’an or in the Sunna, is constitutive of the distinction between the inner self and the embodied one. There are verses and sayings of the Prophet prescribing specific embodied deeds, while others are talking to, and about, the heart. It is in this foundational bivalence of the revelation’s words that lies the potential duality of the revealed law displayed in the sciences of jurisprudence and ethics, as well as the possibility of their unity.

One of the difficulties related to ethics is the twin question of education and communicability. If the inner state is specific to the self, and if it can be known only to God, how can the ethical self be emulated in the community? It requires a process of identification, naming and “externalization” of the inner state that opens up the possibility that it will be communicable to, owned and emulated by, the other through language. However, this inter-subjective interaction is grounded in textuality, for the Qur’an and the Sunna tell us how the inner self is and how it should be. Yet, the model of the ethical self to be followed by the Muslim does not emerge obviously from the foundational textuality. Rather, a knowledge (the science of ethics) establishing the meaning of the texts has been constituted and structured in such a way as to give the actual self the possibility of understanding and emulating the ethical self.

THE TRUTH OF THE SELF AND TRUTH OF THE LAW

Any self-reflection about the self’s inner states requires from the self the ability to tell the truth about her inner self to herself. It is the gap between the actual self and

the ideal self, delineated by the revealed law in Islamic jurisprudence and the science of ethics that enables the work of ethical transformation and improvement. For the relational self, interiority is not a space where the “I” is alone, but is shared with God. The internal conversation that the “I” can have with itself is always triadic, for God is always present with the self and knows everything about her inner life. Speaking the truth about her and to her is also telling God the truth about her, a truth He already knows. From this perspective, sincerity and truthfulness about the inner self to herself is also about her inner self to God. Since God already knows the truth about herself, sincerity is one of the most important inner states required from her in her relationship to Him when she worship Him but also in all her deeds which should be achieved for Him.

For the self to be able to know the truth about herself, she relies on language, which is the appropriate medium allowing her to name, locate, and differentiate between several thoughts and emotions. The science of ethics consists precisely in developing a specific language, a spiritual topography helping the self navigate the complexities of her inner self in her relationship both to God and to the world, and giving life and shape to her.

Ethical realization lies in the encounter between the truth of the self and the truth of the revealed law. The truth of the revealed law, disclosed in the science of jurisprudence and the science of ethics, shaping for her the ideal self, sheds light on the truth *of* and *about* her self. It allows the self to see what are her limitations and her shortcomings and what she needs to do for her to improve ethically. The relationship between the two truths opens up a horizon of change for the inner self and correction of her deeds.

Although what the self needs to know in order to perform the prescribed deeds is located in foundational and subsequent texts (Qur’an, Sunna, and books of jurisprudence), it is not through reading that she learns how to perform the acts of worship or social interactions and transactions. For example, regarding the acts of worship, these prescribed deeds are already embodied in others’ bodies at home, in the mosque, in a brotherhood, as she is able to see and hear them. It is in the visualization-imitation-repetition process enabled by the self’s senses and its daily interactions with the community that she learns how to do these deeds correctly. In other words, it is, knowledge, embodied and disembodied, that allows the self to follow the revealed law.

The prescribed deeds are an end in themselves because they are part of the “ought” of the law, and as such they need to be achieved following a standard sequence of movements and positions of the body in order to be considered valid from the perspective of jurisprudence. Yet these deeds are subjugated to a higher end where the good is located: the submission to God’s will through the submission to His revealed law. The act of prayer is good because it exemplifies this submission, which consists in subjugating the self’s will to God’s. The goodness of the

act has an “objectivity” that does not make it necessarily subjective, for it is related to the ways in which the self performs it. To determine whether a person *is* good, one needs to know *how* she performs the deed—that is, what is her internal state? While the truth of ethical objectivity (what should be done in order to be ethical according to the law?) can be known through the knowledge of the revealed law, the truth of ethical subjectivity (is this individual truly ethical?) remains inaccessible to the community, as only God knows the inner self.

From this perspective, to have access to the truth of ethical subjectivity located in the “heart” requires a *dis-embodied* knowledge, for this kind of truth can be deciphered neither in the movement of human bodies nor in actions available to the eye, but only in the secret of the self. Yet, ethical accomplishment is neither merely being in certain states, nor is it merely doing what jurisprudence prescribes, but lies in the encounter between the truth of the law (ethical objectivity) and the truth of the self (ethical subjectivity).

The condition of possibility of both jurisprudence and the science of ethics lies in the gap between the “is” and the “ought.” However, from the perspective of jurisprudence, the “ought” is related to doing (“you ought to do”), while it is related to being (“you ought to be”) from the perspective of the science of ethics. The revealed law, both in its jurisprudential and ethical dimensions, relates the present to the future, and projects the self into an action to be done, or a state to be adopted. The labor of ethical practice consists in uniting the “is” and the “ought,” in which the projection is sublated into the present. The duties prescribed by the law, notably the acts of worship, structure the flow of time, and organize the self’s days and nights accordingly. Ethical doing and being are never secured, for they call for a continuous and open-ended work of cultivation.

LAW, SPIRITUALITY, AND INNER SELF IN COMPARATIVE PERSPECTIVE

The history of the self in the West has been related to a process of internalization of the “good” at least since Descartes. It posits the emergence of moral autonomy as a distinctive feature of the modern self, who emancipated herself from any form of heteronomy. While the development of “the sense of inwardness” is a central aspect of the narrative of moral autonomization in the West,⁷ I have studied in this chapter the ways in which the exploration of the inner self in Islam may be related to moral heteronomy (in which the good is located in the revealed law) rather than autonomy, and to a form of spiritual ethics that does not necessarily fit the usual opposition between the two.

In the West, religious institutions are no longer considered as legitimate sources of legislation because the space of the inner self is set to be free from any legislating authority, particularly for moral purposes in a context where the “external” law is

no longer the site of the good as exemplified in Kant's moral philosophy. On the other hand, the modern legal regime is described as the "rule of law," which entails obedience to the law of the state but does not involve, in principle, any authority over the inner self, although the modern state in Europe intervenes in redefining and actualizing the old distinction, and relationship, between *forum internum* and *forum externum* (see chapters 10–12).

In many respects, the Reformation is one of the most important shifts in the genealogy of the Western moral self, for the latter became represented as "free" from any religious legal institution. While the law produced by the Church was the site of the good for theologians like Aquinas, it became suspicious from both the perspective of the believer after the Reformation, and that of the civil state whose power was growing considerably in the seventeenth century. In the moral history of the West, Luther contributed decisively to the sharp distinction between the autonomous "internal" state of the believer on the one hand, and the "external" law formulated either by the Church or by temporal power on the other hand. At the same time, a new space for the external law that was not the law of the Church emerged with the civil state, and was theorized by thinkers like Grotius and Hobbes. Obedience to the external law of the state autonomous from, and prevalent over, the external law of the Church and morality was an answer to the problem of confessional war and self-preservation and to the conflict of laws theorized by Hobbes through the monopolization of legitimate (and one may say legal) violence, as Max Weber would put it.

In Islam, notably after al-Ghazali, the development of the space of the inner self through a language of spirituality and practices of its own was intertwined with jurisprudence. In the West, the affirmation of the inner self was related to the rejection of the law of the Church by Luther, as if there was no possible compromise between the Gospel-Spirit and canon law. Faith became purely "internal" to the self and autonomous from the deeds prescribed by canon law, which was less and less useful for the preservation of order and civil peace and the regulation of transactions within the community at a time where temporal power became increasingly in charge of this task. This shift shaped the modern distinction between private and public spheres, even for countries whose majority is Catholic, for the development of state law marginalized the authority of Church law and its ability to regulate both worship and social relations. Yet, as I will show in chapters 11, 12, and 14, autonomy and freedom, while central in the Western self-understanding of law and morality, remains actually intertwined with unacknowledged forms of heteronomy and normative prescriptions that appear the most clearly when dealing with the non-Western Other.

The very materiality of shari'a rules, the fact that they address the body's deeds (and the body's interactions with other bodies), makes them amenable to enforcement by any external physical entity such as the modern state. The truth of shari'a

rules is also inscribed in the materiality of the signs located in the textual sources that have been made manifest to human perception through the revelation, and the subsequent scholarly tradition that transmitted them. And yet, shari‘a cannot be reduced to its materiality, for the embodied deeds jurisprudence prescribes open up the possibility of spiritual life. Spirituality is cultivated in the space of non-enforced shari‘a because it requires the self not only to perform the obligatory deeds (*wājibāt*), but also to do more than what jurisprudence prescribes as mandatory.

In the precolonial Islamic polity, shari‘a rules were enforced by judges and the ruler’s coercive means to the extent that they would secure order, civil peace, and transactions. There were several shari‘a rules, notably those related to the acts of worship (prayer, Ramadan fasting, almsgiving, pilgrimage), that were not usually enforced. It was in this space of non-enforced shari‘a (particularly prayer), that the cultivation of spiritual ethics occurred. Moreover, the formulation of a rule, even dealing with transactions or government, in the form of a fatwa was by its very (non-binding) nature noncoercive. This configuration is an invitation to think about the possibility of a law distinct from modern state law, for it regulates the life of the community but is not necessarily enforced, and may enable spirituality and ethical practices. As a law addressing both the self’s deeds in the material world, but also connecting the self to the spiritual world that cannot be grasped by sensuous perception, shari‘a shapes the self’s life around the very distinction between, and intertwinement of, the material and the immaterial, between embodiment and disembodiment.

It is also in this space of spiritual ethics that the inhabiting of shari‘a as *fragments* is displayed most eloquently. Spiritual practice can be transmitted and taught through the mediation of communities like the Sufi brotherhoods, but the extent to which it can be assessed externally is limited, as this experience revolves around the inner self. The unreachable unity of body and soul, the uncertainties of inner states and dispositions such as sincerity and intent, the extent to which the latter translate into exemplary interactions with others, are all enduring limits for shari‘a’s selves. The cultivation of the inner self with Islamic spirituality is a delving into the unknown and an expansion of the unseen that instantiate shari‘a as fragments. It illuminates the critical role of worship and prayer in relation to shari‘a’s displacement studied in the next chapter.

PART THREE

Jurisprudence

Worship, Social Interactions, and Shari‘a’s Displacement

STUDYING WORSHIP AS PART OF THE LAW

Contemporary studies about shari‘a have approached it as a law regulating social transactions and adjudicated in the courtroom. For the influential academics of the early twentieth century up to the 1970s, jurisprudence regulating the acts of worship did not belong to the domain of “law” proper but to the domain of “religion” and “ethics.”¹ By identifying the lack(s) in Islamic law in comparison to Western forms of law, one would be able to explain the “gap” between Muslim societies and the West.²

According to Joseph Schacht, “None of the modern distinctions, between private and public law, or between civil and penal law, or between substantive and adjective law, exists within the religious law of Islam; there is even no clear separation of worship, ethics and law proper. . . . The concept of any systematic distinction is lacking.”³ “In the present book, however, the subject-matter has been arranged not according to the traditional order . . . but according to the broad systematic divisions of modern legal science . . . in order to enable the reader to appreciate its doctrines against the background of modern legal concepts, to throw into relief not only what is peculiar to it but also what is missing there.”⁴

One may be easily tempted to reproduce Schacht’s distinction between the legal and the non-legal in the study of Islamic jurisprudence, for the regime of separation between “religion,” “law,” and “ethics,” along with other categories (economics, politics) is constitutive of the narratives of modernity as well as the assumptions on which contemporary governmentality is based. This preconception of what a law is (or should be) excluding the “religious” or the “ritual” associated with acts of worship

(*‘ibādāt*) continue to inform contemporary scholarship on shari‘a. Authoritative general bibliographies on Islamic jurisprudence do not include any reference to the regulation of acts of worship. In *A Bibliography of Islamic Law*, developed between 1980–1993, the selection of what counts as law is explicit: “The classical books on Islamic jurisprudence, *fiqh*, deal with a great variety of topics, ranging from ritual purity and dietary laws, to the rules of legal procedure. In this bibliography we have excluded publications on ritual (*‘ibādāt*) and confined ourselves to those parts of the shari‘a that are regarded as law in the Western sense of the word, i.e. the *mu‘āmalāt* and *‘uqūbāt*.”⁵ More recently, the “Substantive Areas of Islamic Law” of the 2019 *Oxford Bibliography* on shari‘a includes entries on “Public Law: The State, Constitutionalism, Warfare,” “Criminal Law,” and “Family Law,” but no entry on worship. Similarly, the voluminous 2018 *Oxford Handbook of Islamic Law*, offering the state of the art in the field, includes, in the part dealing with “Substantive Legal Areas,” chapters on “Islamic Law and Constitutions,” “Islamic Law and Human Rights,” “Islamic Law and Finance,” “Animals” and “Family Law” but nothing on worship.⁷

In anthropology, the distinction between law and religion, and the constitution of “ritual” as a separate category relied on to study a set of practices associated with prayer,⁸ also reinforced the preconception that the study of what could be assimilated to a cross-cultural notion of law and the legal should deal with the mechanisms for the preservation of order, the regulation and settlement of disputes, and the dispensation of justice in non-literate societies and in the absence of the state. In the first half of the twentieth century, Malinowski wrote about *Crime and Custom in Savage Society*, Max Gluckman commented on *The Judicial Process among the Barotse of Northern Rhodesia*, Paul Bohanan dealt with *Justice and Judgment among the Tiv*, and Hoebel and Llewellyn studied the *Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*. New approaches in the discipline have been described as a shift in the 1980s from “legal anthropology” (interested in the settlement of disputes in non-Western societies) to “the anthropology of law” (dealing with processes connected to Western law), with new areas of research related to the nation-state and the global order. Sally Falk Moore writes: “Not only does legal anthropology now study industrial countries, but it has expanded from the local to national and transnational legal matters. Its scope includes international treaties, the legal underpinnings of transnational commerce, the field of human rights, diasporas and migrants, refugees and prisoners, and other situations not easily captured in the earlier community-grounded conception of anthropology.”⁹ Yet, the “anthropological approach to law” is defined by Falk Moore as “the inquiry into enforceable norms: social, political, economic, and intellectual”¹⁰ with the obvious absence of “religious” and “non-enforceable” norms.

On the other hand, worship, and more precisely, prayer, has been studied by anthropologists of Islam and historians of Islamic thought as part of the study of

“ritual,” “religion,” and “ethics,” without reflecting back on the scholarship’s oppositional divides between “law” and “religion,” between the “legal” and the “ethical,” or between the “juridical” and the “ritual” and its implications for the meaning and study of shari’ā. In *Prayer in Islamic Thought and Practice*, Marion Katz stresses rightly that while the rules of prayer “enjoy pride of place in traditional legal compilations . . . they have been marginalized in the Western study of the shari’ā.” Katz’s book offers a study of prayer using primarily jurisprudential texts (*fiqh*) but as a stand-alone type of act without analyzing what it does to the relationship between the (Islamic) jurisprudential categories of acts of worship (*‘ibādāt*) and social interactions (*mu‘āmalāt*), and without reflecting back on the conceptual implications for the academic understanding and study of shari’ā. Paradoxically, Katz reiterates the distinction between law and ritual that her book has the potential to deconstruct: “This study thus aims in part to help in restoring ritual to its proper place in the study of the sharia, and legal analysis to its proper place in our understanding of this category of ritual.”¹¹ In *Politics of Piety*, while Saba Mahmood convincingly questions the relevance of the liberal distinction between politics and religion in the Islamic context, she nevertheless relies on a similarly questionable distinction between law and religion. Mahmood studies women’s prayer as a “ritual” derived from “a moral code” associated with the study of ethics and religious practices in contradistinction with the legal proper: “It is therefore not surprising, for example, that even those scholars who write on the subject of Islamic ethics focus on Islamic doctrinal and legal arguments, while much of the literature that falls under the heading of *fiqh al-‘ibādāt* (the pedagogical aspects of religious obligations) remains outside of their purview.”¹² For Mahmood, the *fiqh al-‘ibādāt* are *not* themselves part of “Islamic doctrinal and legal arguments,” as she translated them as “pedagogical aspects of religious obligations.”¹³

While, from the perspective of the scholarship discussed above, the inclusion of worship in Islamic jurisprudence is an anomaly, I would like to show here that the underlying logic of *fiqh* does not put worship *outside* the law, but *within* the law. Moreover, Islamic jurisprudence requires precisely that the subjects of law ground all their deeds (including the “worldly” ones), and more generally their being in the world, in the acts of worship. The distinction made by Islamic scholars is not between what is legal and non-legal in Islamic jurisprudence, but between different kinds of deeds, notably between worship and social transaction, *within* Islamic law. It is an invitation to think not only a different kind of law than contemporary state law (which does not regulate worship), but also to understand a form of life based on the intertwined relationship between acts of worship and social relations. The law is not only a distinct set of rules prescribing or proscribing deeds or against which deeds are assessed, but also gives shape to life as much as it reflects forms of life.

WORSHIP AND SOCIAL INTERACTIONS IN AL-AZHAR MOSQUE

In order to better grasp how Islamic jurisprudence formulated by classical and contemporary scholars-jurists not only regulates both acts of worship and social relations, but also assumes an organic relationship between them, I would like now to turn to a brief ethnographic account of a lesson delivered in Al-Azhar Mosque by a scholar-mufti.¹⁴

Most scholars giving lessons in the scholarly circles at Al-Azhar Mosque are entitled to give legal opinions (fatwas). In the Fatwa Council adjacent to the rooms where the scholarly circles meet, they act not as scholars dispensing knowledge, but as muftis (jurisconsults) giving legal advice. People usually come to the Fatwa Council to have a response to a question ranging from acts of worship (*'ibādāt*) to social transactions (*mu'āmalāt*), including marital issues.

Usually right after the afternoon prayer, one of the muftis who has spent the day giving legal opinions in the Fatwa Council gives a lesson to the worshippers who performed the prayer. This lesson dealing with the meaning of Islam takes the form of advice (*maw'īza*) and guidance (*irshād*). At this moment, the scholar does not act as a mufti, but as a man of call and preaching (*da'wa*). Yet, the preaching is about the meaning of the revealed law in Islam, and how it should be understood and lived by Muslims, notably through the relationship between acts of worship (*'ibādāt*) and social relations (*mu'āmalāt*).

Worship and social relations are the two main spheres jurisprudence deals with. However, in a context of *da'wa*, the scholar is not responding to questions related to a specific case, and does not formulate a detailed rule prescribing or proscribing a given act. Rather, he tries to speak directly to "the heart," and invites the audience to reflect on the meaning of the duties prescribed by jurisprudence. For both the mufti-*dā'iya* and the Muslim, it is a moment that allows them to get out of the casuistry of the law to recall and constantly expand the meanings of the law and its prescriptions. It is a way to put the law at a distance, not to reject it or to say it is peripheral in Islam, but rather to reaffirm its centrality and importance, and its ability to address the interiority of the Muslim. It is also a way to underline that the two main ensembles of prescriptions of the law, acts of worship (*'ibādāt*) and social relations (*mu'āmalāt*), are not separated from each other but inter-connected, and should be considered in their unity.

As implied in the names *maw'īza* (recall and advice), *irshād* (guidance), or *naṣīḥa* (advice), preaching (*da'wa*) relies on linguistic forms that are not imperatives but suggestive, calling for a work on oneself, both internally and externally, to be able to perform the law properly and meaningfully. When a Muslim asks a mufti for a fatwa, she usually expects a clear response regarding the lawfulness of a given act. Is the act in accordance with the law? What are the conditions making

an act conform to the law? The fatwa addresses a specific case involving one or several individuals, and is often related to a previous or an expected act (or a series of acts). In the *da'wa* context, general questions—*why* and *how* does the Muslim follow the rules prescribed by the law?—are as much as important as the mere action that the questioner is expected to perform. In both moments, the mufti-*dā'iya* speaks in the name of the law, albeit in different ways, in different scenes, with different audiences, and relying on different genres.

Let's hear the mufti-*dā'iya*, Sheikh Mamduh:

This precious education, the education of prayer (*ṣalāt*), the education of fasting, the education of almsgiving, the education of pilgrimage, all the acts of worship ('*ibādāt*'), are a way to educate man. When we do all these educative acts, we are designated as the people of Islam (*ahl al-islām*). When you are asked: are you Muslim? What does Islam mean? We usually think of it as the *shahāda*, and as prayer, almsgiving, fasting. . . . True, it is an understanding of Islam. Yet, Islam did not come only for worship, because if it was only for worship, God the Almighty has enough creatures bowing (*rukū'*) and prostrating (*sujūd*) to honor Him. So it is not only a matter of worship, but first of all, a specific kind of worship, the worship performed by the human (*al-'ibāda bi-naw'i al-insān*).

All the acts of worship complement each other. When I fast I am not only doing a duty, I am also building my own self (*binā' nafsi*) so I can act and behave properly (*ata' āmalā*) with others. Let's follow the example of the Prophet.

An old man with white beard, dressed with white clothes, on whom the traces of travel were apparent, came to the Prophet, who was sitting with the Companions, and he asked him: 'What is Islam?' 'Islam consists in bearing witness that there is no god but God, and that Muhammad is the Prophet, and in performing prayer (*ṣalāt*), almsgiving (*zakāt*), fasting the month of Ramadan and the pilgrimage.' The Prophet then said: 'Islam consists in submitting your heart to God (*an yuslima qalbaka li-Allah*) and in making people submit to God through your tongue and hand (*wa an yaslama al-nāsu min lisanika wa yadik*).'

When we think of these two responses, they are two responses but the question is one. The first response establishes firmly the relationship between us and God regarding His Unity (*tawḥīd*) in prayer, fasting, almsgiving and the pilgrimage. The second response establishes firmly the source of the relationship between you and the people because you interact (*tata' āmalu*) with the people starting from your heart (*qalbika*) and your limbs (*jawāriḥik*). Your heart is the site of your interaction with the people, and it is also the site of your interaction with God. When you look at the first response and the five pillars of Islam, it leads you, in its whole finality, to the second response, which consists in submitting your heart to God (*an yuslima qalbaka li-Allah*) and in making people submit to God through your tongue and hand.

Why have these acts of worship been instituted? Why praying? God says in the Qur'an, 'The prayer prevents [the worshipper] from doing abominable sins and unlawful acts' (*al-ṣalāt tanhā 'ani al-faḥshā' wa 'ani al-munkar*). It allows you to

avoid doing these acts when you interact with the people, and makes you avoid doing harm to the people. So, the prayer is a way to have a virtuous relationship (*'alāqa ḥasana*) between you and the people. It is the same with fasting. Here, *taqwā* (awe and piety) is a form of prevention (*wiqāya*) from harming people. . . .

If there is evil in the relationships between people, it means that our worship (*'ibādatunā*) is rejected, and if the relationships between us are not good, it means that our acts of worship are no longer able to reach God (*al-'ibādāt tawaqqafat 'an šu'ūdihā 'an rabbi al-'ibād*).

The relationship between you and God prepares you and qualifies you (*tu'ahilluka*) for a virtuous relationship between you and the people. Islam addresses the limbs but also the heart. The tongue and the hands are important, for they are the ones able to harm the others the most.

Islam addresses the outer (*ẓāhir*) and the inner (*bāṭin*), and focuses on the submission of your heart to God. God does not accept from you an act of worship that is polluted (*mulawwath*), and full of hatred (*ḥiqd*). If the heart is full of hate and envy, full of moral illnesses (*amraḍ ma'nawiyya*), you need to know that it is also part of your relationship with God. The Prophet focused on the inner and its secrets, for the heart is the center of Islam, for the heart is a risky thing (*amr khaṭir*), for the heart is the site of love (*ḥubb*) and hate (*bughḍi*).

In this *ḥadīth*, the Prophet tells us that the heart should submit to God. You orient yourself to God not only with your reason and sight but also with your heart. The heart is active, and it is suggested that God endowed the heart with limbs and senses: it sees, and hears. What is Islam? Islam is worship (*'ibādāt*), and social relations (*mu'āmalāt*), and worship prepares you for the good interaction [*al-mu'āmalā al-ḥasana*]. In the acts of worship and service to God (*'ubūdiyya*), it is the self (*nafs*) that is central. Doing ablutions and moving the limbs is the easiest part, but the most difficult thing in Islam, and what is central in worship, is your relationship to the self (*nafs*), to fight (*tuqāwima*) your heart and the ability to make it accountable (*an tuḥāsiba naḥsak*), and to orient your heart and your limbs so you will not harm God's creatures.

Following Sheikh Mamduh, the acts of worship prescribed by jurisprudence orient a person toward God in the specific time-space they are performed in, but are also a way to educate the self, and to prepare her to inter-act virtuously with others. The acts of worship constitute the self as a *relational* self attached to God. Although the relationship of the self to God is distinct from her relationship to others, it is not separated from it, for the former entails the latter. When the self has nurtured her relationship to God through the acts of worship over time, she has educated herself in such a way that she is prepared to behave morally with others, for the deeds prescribed by jurisprudence address her heart through the limbs. In the obligatory prayer (*ṣalāt*), it is not only her body that is submitting to God, but also her heart. The submission of the heart to God does not only occur in the limited time-space of prayer, but becomes inscribed in and constitutive of the self in such a way that

it is reflected back in and illuminates her embodied deeds when she is involved in interactions with others. The heart, educated by the prescribed acts of worship, shapes the self's exemplary deeds with others. As a model of virtue, these words and deeds ("your tongue and your hand") make the people with whom the self is interacting submit to God.

From this perspective, Foucault's "care of the self" as it has been used in the anthropology of Islam and Islamic studies¹⁵ is not the right way to understand ethical practices in Islam (see chapter 1 for an extensive discussion on this point). Rather, the self, enmeshed within interactions with others, is what I call a *contained self* and a *serving self*, or to put it another way, a *caring self*. Whether at the time of exceptional events such as the 2011 revolutionary upheaval, or in everyday life, the self is contained because he is serving God and others, and the aspiring ethical self should be contained so as to better serve them. The social self should not be set apart from the worshipping self oriented toward God. Here, Islamic jurisprudence presumes the disharmony between social self and worshipping self. Its labor is not only to bring harmony between the two selves, but to produce their unity over time.

Hence, when evil occurs in the community, it should not be considered in isolation from the relationship of each Muslim to God through the acts of worship. Wrongdoing cannot be explained only in positivist terms, for everything that happens in the community should make the self think of the strength and truthfulness of her relationship to God. Avoiding the wrong and doing the good in the world is not self-contained in her relationship with others because it is always related to her own acts of worship, which shape the self in such a way that she is prepared to act ethically (illustrated in Sheikh Mamduh's lesson).

The importance of prayer for ethical behavior and its formative role regarding the self is better understood when one recalls that shari'ā rules do not have all the same temporality in the life of the Muslim. While the individual is expected to perform shari'ā rules several times a day everyday regarding prayer, he may encounter shari'ā rules in the sphere of transactions (*mu'āmalāt*) only a few times in his life, either in the courtroom or as a question asked to the mufti, depending on the kind of activities he is involved in. Significant moments in which shari'ā rules are enacted may include marriage, divorce, and inheritance. From this perspective, shari'ā rules, notably those regulating obligatory prayer (*ṣalāt*), structure the day of the Muslim and shape his experience of time.

But the Muslim should also be prepared to spend "a long time" in practice, for it is the sedimentation of repetitive daily acts of prayer over the years that allows him to reach moral rectitude (*istiqāma nafsīyya*). This experience of time is related to the ability to leave the state of heedlessness (*ghafla*) for a state of full awareness (*yaqāza*) that becomes constitutive of the self over time.¹⁶

ENFORCING THE LAW

Any attempt to grasp the legal in shari‘a would fail if it is exclusively assimilated to its enforcement by a court of justice, either in the premodern or the modern contexts. Although the revealed law is the site of the good, Islamic jurisprudence is first and foremost a form of hermeneutical knowledge whose underpinning logic is procedural. Islamic scholars rely on procedures of truth-seeking to produce rules that guide Muslims in their life, for example in the form of fatwas. The fact that the rules are not enforced by the court, or may not be followed by individuals, does not mean that Islamic jurisprudence (*fiqh*) is no longer a law, with its distinctive logic, modes of reasoning, and ways of assessing facts and deeds. Because it is precisely a law in which the good is located, it does not need necessarily to be enforced to be meaningful and relevant in everyday life.

The formulation of a “universal” definition of law by Western jurists, notably “a pure theory of law” as Hans Kelsen put it, exemplifies the way contemporary legal science equates law with enforcement. Kelsen, who has been heavily influenced by Kant’s theory of knowledge—the justification of which does not depend on experience—defines the “pure theory” of law as “the science of law” that “attempts to eliminate from the object of this description everything that is not strictly law: its aim is to free the science of law from alien elements.”¹⁷ In Kelsen’s universal theory, coercion is the basis of all distinction between a legal system and a non-legal normative system: “As a coercive order, the law is distinguished from other social orders. The decisive criterion is the element of force—that means that the act prescribed by the order as a consequence of socially detrimental facts ought to be executed even against the will of the individual and, if he resists, by physical force.”¹⁸ In a way very similar to Hobbes, for whom the rules produced by the Church have no legal authority because the physical power of enforcement of the state allows the latter to be the sole law-maker, Kelsen acknowledges the possibility of other norms regulating social behavior, but, for him, they can never be considered a form of law because they lack coercion. Hence, the (pure) law cannot be distinguished from any other norms on the basis of procedures of rule-production and truth-seeking grounded in specific forms of reasoning (as I do regarding Islamic jurisprudence), but rather only on the basis of its enforcement by a central authority.

Moreover, for Kelsen, “the object of regulation by a legal order is the relation of one individual in relation to one, several, or all other individuals –the mutual behavior of individuals.”¹⁹ Therefore, it can never be the task of the law to regulate the inner self or the individual’s relationship to the divine. It is relevant to note here that if we rely on Kelsen’s theory of law to study shari‘a rules, we would have to look for the two criteria formulated by Kelsen: (1) coercion and (2) the regulation of social interactions. Then we would not dismiss all shari‘a rules as non-law or impure law, but we would consider that the domain of social interactions

(*mu'āmalāt*) adjudicated before courts of justice and enforced by the ruler in pre-colonial times is law proper, while the rules regulating the sphere of worship (*'ibādāt*) would be considered "religion" or "morality" and never "law" because they regulate the relationship of each individual to God.

If, in the West today, the law, associated with the state and the courts, does not regulate worship or determine its content, this configuration was not always the case, for there was a time where canon law not only regulated matters related to sacraments but also to preserving civil order, administering penalties, and other "temporal matters." For centuries (notably from the twelfth century until the seventeenth century), the Church was in conflict with temporal authorities regarding the nature and limits of its jurisdictional power over ecclesiasts, the worldly ruler, and the laity. The development of the sphere of state law theorized by jurists and theorists like Grotius and Hobbes in conjunction with the Lutheran Reformation, which grounded salvation in inner faith rather than external works prescribed by canon law, contributed decisively to the exclusion of all other possible legal orders.

Hobbes's *Leviathan* can be understood as work devoted to the formulation of arguments in favor of a mono-*nomos* political community in which the power to produce the law and to enforce it belongs exclusively to the state. For Hobbes, religious prescriptions may be relevant for the production of law, but by themselves, they do not have any power—or more precisely, they do not have any power as long as they are not formulated in the framework of state law and enforced by it. Subjects should obey the teachings of Scripture only to the extent that they are made laws by the sovereign "whose Commands have already the force of Laws." Although the books of the New Testament are "most perfect Rules of Christian Doctrine," they cannot be made laws "by any other authority than that of Kings or Sovereign Assemblies."²⁰ The Church has no "legislative power" and "whatsoever is propounded by every man" in the name of God cannot be considered as His law, particularly if "it is contrary to the Civil law, which God hath expressly commanded us to obey."²¹

Hobbes's thought exemplifies the shift in the trajectory of the category of "law" and the practices associated with it. What was meant by "law" was no longer related to the Church and the domain of "religion," but became exclusively associated with the state. From this perspective, the modern state can be characterized not only as a structure with "the monopoly of legitimate violence," as Weber put it, but also as the entity that has the monopoly over law production. In modern times, we take for granted that the law is necessarily produced by the state and should be enforced in a court of justice, because our current conception of what a law is, is closely related to the unique history of law, state, and Christianity in Europe.

From this perspective that informs the preconceptions of most scholarship (starting from Legal Orientalism) on shari'ā, the latter is usually considered a "law" only to the extent that it regulates social relations *and* is enforced by judicial

power, while the rules regulating worship are not considered part of the law. Moreover, a legal opinion (fatwa), because of its non-coercive nature, would not be considered as law proper, even if it deals with social relations. Hence, it is only a *certain* way of dealing with a *certain* category of shari'a rules (the rules dealing with social interactions that are no longer enforced by the court) that may be consistent with the narrative of shari'a's demise under which modern state law *replaced* Islamic jurisprudential rules. One cannot reasonably say that today, the most important rules in the hierarchy of Islamic jurisprudence (the acts of worship) addressing individuals without enforcement or the mediation of a court of justice are no longer applied. Rather, there has been a *dis-placement* of shari'a in conjunction with the development of state law in colonial and postcolonial times.

In addition, one should not conflate authority with force. It is true that the two can go together, notably in recent times where new generations of Muslim jurists educated in modern universities began to adopt the modernist definition of law enforced by the state. But this does not mean that shari'a has no authority today or that the time-space of application of legal rules by individuals and communities is restricted to the time-space of state law. As exemplified by Hobbes's *Leviathan* or Kelsen's *Pure Theory of Law*, it is precisely the claim of the modern state that only itself is entitled to utter and enforce the law within a delimited territory. However, it remains a claim that is not necessarily true from the perspective of the people for whom shari'a is meaningful in everyday life as well as in times of crisis and exceptional events.²² In other words, it is not because several shari'a rules that used to be enforced in precolonial times are not enforced in colonial and postcolonial times, that shari'a is no longer authoritative. For its authority does not lie in fixed substantive rules but rather in the relationality it enables, for example when the Muslim needs to make a decision and addresses a scholar-mufti in a moment of uncertainty and doubt.

THE LEGAL AND THE ETHICAL

Keeping in mind the modernist conception of the law associated with enforcement and the regulation of social interactions exemplified by Kelsen's *Pure Theory of Law*, I would like now to turn to the relevance of the a priori distinction between law and ethics in an influential work on shari'a, especially in relation to the status of acts of worship in the discipline of jurisprudence (*fiqh*). Baber Johansen's *Contingency in a Sacred Law* offers a critical review of the Weberian notion of "sacred law" and its use in Legal Orientalism and beyond. Johansen, in a discussion of the categories relied upon in the Western study of shari'a starting with Hurgronje, criticizes the reduction of the study of *fiqh* by Schacht to its purely "legal" component. Johansen points out, first, that the absence of a distinction between religion, ethics and politics in Islam stressed by Hurgronje,²³ and his insistence that *fiqh* is not a legal system and

cannot be studied as law (equated with “Roman” and “modern” law) did not allow for comparisons between Islamic juridical regimes and non-Islamic ones. For Johansen, it is Weber who should be credited for studying *fiqh* in a comparative perspective through his category of “sacred law” that also introduced a hierarchical typology of laws attached to distinct cultures according to their rationality in which the sacred law impedes the rationalization-modernization process. (On Weber see chapter 13.)

It is Schacht who, according to Johansen, was the first in twentieth century academia to study *fiqh* as a “rational system” (shaped by pre-Islamic legal forms, notably Jewish, Roman and Christian law, and territorial customs), with “a clear distinction between the purely religious sphere and the sphere of law proper.”²⁴ Johansen stresses also that the study of *fiqh* as a legal system enabling comparative approaches in relation to Western law was also pursued by twentieth century’s Arab jurists, notably Abd al-Razzaq al-Sanhuri, the main author of the Egyptian Civil Code of 1948–49 (see chapter 13).

Yet, for Johansen, the study of *fiqh* as law, as understood by Schacht and subsequent scholars, excluded the components that did not fit the Western conception of law: “The liturgical acts, the ethical content of those norms which cannot be applied by courts but which address the conscience of the individual believers, their *forum internum*, in short, the religious dimensions of the *fiqh*, has hardly been considered as an object of legal reconstruction and would need a completely different approach. The transformation of a sacred law into a code established by legislation changes its basic structures and sacrifices some of its important dimensions.”²⁵

Johansen is certainly right that contemporary scholarship missed “an important sphere” of *fiqh* (what I would rather qualify as its *most* important dimension) that did not fit the modernist definition of law. This is true not only in the study of *fiqh* but also more generally in the study of shari‘a as discussed throughout this book. While keeping the Weberian notion of “sacred law,” Johansen shows that the latter doesn’t mean the lack of rationality or an “absolute” understanding of normativity, but rather entails the study of forms of juridical reasoning grounded in debate and “contingency” inscribed in, and constitutive of this very “sacred law.” Yet, with this very gesture aiming for the salvaging of *fiqh* as law with its distinct rationality, Johansen paradoxically reiterates a restrictive understanding of what counts as law, associated in his writings with a normative regime enforced in the court.

As suggested by the title of his book, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*, Johansen continues to work with the assumption (similar to Schacht’s and widely shared among students of shari‘a, as we saw earlier) that the “religious” and the “ethical” can be defined substantively and can be distinguished a priori from the “legal” proper following the six categories of

Islamic jurisprudence qualifying the nature of an act. Johansen summarizes: “The fully developed scale of ethical evaluation combines five (and in the case of Hanafite law, six), ethical categories of legal significance: acts can be: 1/ ‘obligatory’ (*wājib*); 2/ ‘recommended’ (*sunna, mustaḥabb*); 3/ ‘indifferent’ (*mubāḥ*); 4/ ‘reprehensible’ (*makrūh*); and 5/ ‘forbidden’ (*ḥarām*). This scale of ethical evaluations contains qualifications which address the conscience of the believers only, such as ‘recommended’ or ‘reprehensible’. The two categories do not imply commands or interdictions, they express purely ethical considerations and evaluations. The Qadi is not supposed to use them.”²⁶ In other words, for Johansen, the legal can be defined on the basis of its categorical prescriptiveness shaped by two polar opposites (the obligatory and the forbidden, the valid and the non-valid) enforceable in the court (“used” by the qadi to frame his judgment), while the ethical is that which fall between those two opposites and is non-enforceable before a judge.

Throughout *Contingency in a Sacred Law* Johansen equates the legal with judiciary rules dealing with the individual’s external and manifest deeds and speech (“legal norms which concern the *forum externum*, i.e. the judiciary’s judgment on observable acts and enunciations”), while the ethical, and more generally the religious, includes exclusively norms addressing the inner self (“ethical norms concern the *forum internum*”).²⁷ In another iteration, the ethical includes “the liturgical acts . . . those norms which cannot be applied by courts but which address the conscience of the individual believers, their *forum internum*, in short, the religious dimensions of the *fiqh*.”²⁸

The problem with Johansen’s definitions and distinction of the legal from the religious-ethical through the categories *externum* and *internum* is that they fail to capture the status of rules regulating worship (*ibādāt*) that are dealing with observable external and bodily deeds. These definitions also fail to include the inner dimension of external deeds, notably through the notion of intent (*niyya*) required not only for the validity of worship but also social interactions (*mu‘āmalāt*) that are part of the “legal” sphere as understood in *Contingency in a Sacred Law*. Now, even within Johansen’s own frame of reference, the introduction of the judiciary as a criterion differentiating the legal from the ethical-religious would have required an important distinction within the sphere of rules regulating the “external” (observable bodily deeds), between those deeds that can be brought before the court and those that cannot.

In addition, the involvement of the judiciary may not be a definitive criterion of differentiation between the legal and the ethical-religious, as another distinction should be made between an obligation that *can* (as a potentiality) be brought before the court from the perspective of the discipline of jurisprudence (*fiqh*), and how the actual practice has historically been in Muslim societies. While the conditions under which not performing the act of prayer (*ṣalāt*) have potentially serious material consequences in terms of fatal punishment and exclusion from funeral

prayer and inheritance,²⁹ and while the inclusion of *ṣalāt* was also used in more “mundane” court cases, dealing for example with divorce, the neglect in performing the obligatory prayer or its deficient performance were nevertheless part of the socio-historical reality to which the most pious and stringent jurists accommodated, particularly in relation to non-literate people and those living in the countryside.³⁰ In other words, because certain cases involving acts of worship can, in classical Islamic jurisprudence, potentially be brought before the court, differentiating the legal from the ethical on the basis of potential litigiousness does not hold.

Furthermore, defining what counts as law in *fiqh* with the court’s purview (“the judiciary’s judgment on observable acts and enunciations,” in Johansen’s terms) would exclude the normative production of the fatwa as scholars-muftis enunciate non-binding prescriptions in response to questions formulated by individuals that may or may not be related to an adjudicated case, and may include not only social transactions and interactions but also acts of worship and issues related to belief and creed.

The attempt to use a priori or substantive definitions contrasting the legal and the ethical (or the religious) in the study of shari‘a, and more generally in the study of Islam, will not work. Rather, one should start from the distinction between the (revealed) law (including its attached knowledges), its authorized interpreters, and its addressees. As revealed law, shari‘a is already *the* good. It is ethical in itself, whether its prescriptions deal with external deeds or inner selves. Engagement with shari‘a, either through the production of its knowledges by Islamic scholars, or through the inhabiting of rules and prescriptions by shari‘a selves, including inner dispositions and outer deeds, are all forms of ethical engagement. Hence, the ethical in Islam cannot be located merely in the “*internum*” (versus the “*externum*”) but is fundamentally relational, enabled by the relation between shari‘a and self, mediated by knowledges of shari‘a, and more generally, by knowledges derived from, and dealing with the revelation.

MATERIAL SHIFTS, DISPLACEMENT, AND SHARI‘A’S RELATIONALITY

The inclusion of acts of worship not only as an integral part of shari‘a but also as its central component is related to a fundamental question about the extent to which modernity, and more specifically the nation-state, have affected Islam. This major theme of scholarly debate entails an understanding of how to study “pre-modern” Islam (“formative,” “classical,” “post-classical”) in relation to the (anthropological) present, and raises the question as to whether certain forms of life (associated with the “premodern”) are possible in contemporary times.

In *Shari‘a: Theory, Practice, Transformations*, Wael Hallaq narrates a “macro-history” of shari‘a and its “structural demise” focusing on the “systemic components

of shari'a" rather than "other contingent features that vary from one place or time to another." For Hallaq, "until the dawn of modernity, there always existed within the shari'a structures of authority and discursive and cultural practices that did not change over time and space—that is until they met their structural death in the nineteenth and early twentieth centuries." Hallaq locates those structural characteristics in educational practices and functions of "the jurisconsult (*mufti*), the judge (*qadi*), the author-jurist (*musannif*), the law professor (*shaykh*), the notary (*shuruti*), the court scribe (*katib*)," who all embodied shari'a through their scholarly, social and ethical practices. These distinctive structural features of shari'a include also forms of social solidarity and charitable practices and institutions (the *waqf*, the "Circle of Justice") informing good government and judiciary practices. Those "structural mechanisms, procedures, substantive laws, values and ethic of adjudication followed a unified notion of justice."³¹

In Hallaq's account, with the advent of the nation-state, the distinctive features defining premodern shari'a were doomed to disappear as the two "systems" were incompatible. The demise of shari'a is the result of the nation-state's assault on the social, scholarly and judicial institutions (*waqf*, madrasas, *qadis*) and the introduction of new substantive legal areas of law (commercial, criminal, civil) replacing Islamic jurisprudence (*fiqh*) and regulating new capitalist activities. What remains is a residue of substantive law regulating the personal status that has been, however, uprooted from the logic and socio-institutional environment of *fiqh*, and transformed into state law.

Hence, shari'a cannot exist without "the social order it presupposed and by which it was sustained," a social order precluded by the nation-state. Shari'a cannot survive under the power of the modern state, understood by Hallaq as an omnipotent structure that leaves no space for other legal regimes: "The intractable presence of the state—the virtually all-powerful agent exercising the option of reengineering the social order—has preempted any vision of governance outside its parameters. To practice law in the modern era is to be an agent of the state. There is no law proper without the state, and there is no state without its own, exclusive law."³²

Hallaq's account is better understood as an analysis of the material changes brought about by the nation-state ("the material, bureaucratic and military powers of the state"³³) and how they affected the institutional trajectory of shari'a and its relevance in modern times. Contemporary shari'a is no longer (premodern) shari'a, but a "marker of identity." Hallaq stresses that shari'a has been "transformed from a worldly institution and culture to a textuality." What remains is a surviving "residue" that is "foreign, in substance and function, to any possible genealogical counterpart."³⁴

Yet, Hallaq's macrohistorical, material, and institutional analysis of shari'a in modern times never addresses the question of the relationship between (premod-

ern) shari‘a and the self, and the extent to which the nation-state precludes such a relationship. This theme is significant because *fiqh* is initially defined, starting with Abu Hanifa (one of the earliest scholars of shari‘a, whose name is associated with the eponymous juridical school), as “the knowledge of the self about the rights for her and upon her” (*ma ‘rifat al-naḥs mā lahā wa mā ‘alayhā*).³⁵ The self matters also as a contemporary concern raised in relation to the meaning of individual life and the extent to which it should be guided by the Islamic “religion” as opposed to secularism, and whether Islam should be equated with shari‘a.

The question of shari‘a’s relevance should therefore start with the ways that shari‘a addresses the self, and how it enables the self to inhabit time and space and instantiate her relationship with God and the unseen. The question of shari‘a’s significance in the present and the future is important for the believer (and practitioner) who organizes (or not) her life around shari‘a rules regulating the acts of worship. In the hierarchy of Islamic jurisprudence, the rules of worship, mainly the act of prayer, come not only prior and higher than the rules regulating social interactions, but enable a distinct and unique time-space of communication and interaction with the divine involving outer deeds and inner self.

The profession of faith is not only uttered by new converts to Islam, but also declaimed by the muezzin and heard by the community of Muslims five times a day, and uttered by the Muslim in his prayers several times a day. The act of prayer (*ṣalāt*) is the shari‘a act performed five times a day, at home or at the mosque, individually or collectively, that structures the daily temporality and life. Fasting the month of Ramadan is another shari‘a rule offering a daily temporality distinct from the other months of the year. Giving the due alms (*zakāt*) is an act of solidarity by which the self is also attentive to the needs of others. Performing the pilgrimage (*ḥajj*) in Mecca is the event of a lifetime for those who can afford it.

Hallaq underlines the centrality of the regulation of worship in Islamic jurisprudence,³⁶ and recalls that “their priority in the overall corpus of the law . . . was not merely an emblem of symbolic importance. . . . Rather it had a function which made this ritualistic grouping a logical and functional antecedent. The function was subliminal as well as psychological, laying as it did the foundations for achieving willing obedience to the law that was to follow, that is, the law regulating human affairs.” For Hallaq, “to oust these pillars from the *fiqh* is to disengage the moral foundations of the law, to render it devoid of the most compelling impulse for jural observance.”³⁷

Yet, paradoxically, while Hallaq stresses the importance of the acts of worship in his study of premodern shari‘a, he doesn’t analyze, in the last part of the book dedicated to modern transformations, the extent to which they inform his thesis of the modern demise of shari‘a. Actually, the material changes described by Hallaq do not preclude the inhabiting of shari‘a rules regulating the acts of worship by Muslim subjects in contemporary times. Each day, contemporary Muslims

perform a multitude of micro-acts regulated by shari‘a. From this perspective, the forms of life that shari‘a enables, in premodern as well as in modern times, are better understood as *fragments* in the daily life of the self in specific times and spaces.

If shari‘a is practiced by Muslim selves through the daily acts of worship that are the most important prescriptions in the hierarchy of Islamic jurisprudence, then the question of shari‘a’s relevance in contemporary times should be reformulated to tackle more specifically the status of *mu‘āmalāt* (social interactions), in addition to the relationship between *mu‘āmalāt* and *‘ibādāt*. The time-space of shari‘a is distinct from the state’s, although they may overlap. Unlike state law, shari‘a enables an intimate relation between self and law through the mediation of knowledge, and more specifically, of those who know (*‘ālim*, *faqīh*, *muftī*) addressed through the very act of asking a question (*istiftā’*).

From this perspective, shari‘a is fundamentally relational, based on a relationship between shari‘a holders and Muslim selves—that is, those who produce knowledge and those who seek responses to abstract questions about beliefs, the unseen, and immaterial life, and practical questions about the right deeds. More specifically, the relevance of Islamic jurisprudence can be grasped in the distinct time-spaces of worship and social interactions through habitual practices as a way to inhabit and live the most important shari‘a rules, and the relationality between knowledge production and its reception. On the one hand, we find believers and practitioners, and on the other hand, those who know.

Now, the institutional and material forms (the madrasa or the *waqf*) studied by Hallaq are the concrete social world of Islamic jurisprudence, and one historical form that should not be equated with shari‘a as a relationality. The disjunction between the given material and institutional conditions for the production of knowledge, and the production of knowledge itself, does not mean that shari‘a is no longer generative of knowledges under new conditions, particularly in the specific time-spaces of the Sufi brotherhoods, the Islamic movements of *da‘wa* (preaching), the mosques, contemporary universities, but also in public places (Tahrir Square during the 2011 uprisings) and digital spaces. The task of anthropology is to study the production and reception of those knowledges in distinct time-spaces.

It could be objected that identifying contemporary shari‘a in the time-spaces of its instantiation is already an indication of its marginalization by state law. However, shari‘a in premodern times was not a totalizing law (to which the nation-state law is associated) but also existed in specific time-spaces of production of shari‘a knowledges and their reception (including as fragments for selves) despite the claim that the duty of both power holders (rulers, governors, and judges) and scholars was to uphold shari‘a rules. Paradoxically, studying premodern shari‘a as a totality, and arriving at the conclusion that shari‘a no longer exists because it can

no longer sustain itself as a totality in modern times, mirrors the moderns’ narrative interested in “purification” and in “interpreting the heterogeneous arrangements as systematic totalities in which everything would hold together.”³⁸

It is true that the nation-state’s law, unlike the multiplicity of laws ordered under the normative hierarchy of the medieval Christian episteme, does not recognize any law but itself. State law enables, and is enabled by, a constitutive act of sovereignty attached to a clearly delimited and demarcated territory coupled with the means to enforce its rules. It acknowledges only other similar (state) entities endowed with the same attributes of legislative sovereignty over distinct and discreet territorial domains.

Yet the advent of state law is not a replacement of shari‘a but its displacement into a new normative duality entailing distinct and yet overlapping time-spaces, requiring a nuanced analysis of the relationship between the production of shari‘a knowledges and their reception by the shari‘a selves who are also the state law’s subjects. The regulation of bodies and material deeds by state law excludes any episteme of the unseen, be it the inner self or any other realm of existence. In contrast, while Islamic jurisprudence takes as its object material and bodily deeds, it nevertheless reenacts, notably through the acts of worship (but also through other shari‘a knowledges, *kalām*, and Sufism), the relationship between the seen and the unseen, between body and soul, between external deeds and inner self.

An additional distinction between the modern claim of effectiveness³⁹ and ethical agency (enabled by its internal link to revealed truth) should be introduced here. The ability to enforce enunciated rules is an important component of the state law’s effectiveness in a given territory, as the latter is neither interested in metaphysical truth nor in ethics, and does not seek to be desired and inhabited by willing subjects. State law does not see the subjects’ submission to the rules as an instantiation of a higher truth or as a way for them to improve ethically, although contemporary state law may intervene in the shaping of inner selves through the definition of the *forum internum* and the *forum externum* (see chapter 14). By contrast, the rules regulating the daily multitude of acts of worship that are the most important duties of Islamic jurisprudence, but also the rules regulating social interactions and enunciated in the time-space of the fatwa, are neither adjudicated in a court of law nor enforced. It is understood that the shari‘a subjects are acting ethically and cultivating virtues through their devoted submission to, and performance of, the prescriptions linking the seen with the unseen and reenacting the truth of the revelation. Hence, failures, repeated attempts, and partial performance are also part of the ethical life of the shari‘a subject. In other words, ineffectiveness, which could also be the result of the effectiveness of state law and its overlap with Islamic jurisprudence, is an integral part of ethical agency.

Islamic Legal Knowledge and the New Real

The inclusion of acts of worship and their relationship to social interactions in the study of shari‘a opens up the possibility of understanding contemporary Islamic legal knowledge in a new way, as it sheds light not only on how Islamic scholars deal with the question of modern overlap between the space of jurisprudence (*fiqh*) and state law, but more fundamentally on the epistemic change providing the “present” and the “real” with an authority it did not have. Building on chapter 6, I will study below the distinction between worship and social interactions in Yusuf al-Qaradawi’s work and in classical genres of jurisprudence. I ask what this tells us about changing representations of the “present” and the “real” and how they have shaped the production of legal knowledge for contemporary scholars, starting with Muhammad Abduh and Rashid Rida in the early twentieth century.

Yusuf al-Qaradawi’s legal opinions on the relevance of shari‘a in non-Muslim countries have been diffused among Muslim minorities, but have also been widely discussed in Egypt and other Muslim-majority countries and raised several questions about the scope of shari‘a rules according to time, place, and social environment. As early as 1960, al-Qaradawi, at the request of the Grand Sheikh of Al-Azhar, wrote *The Lawful and the Unlawful in Islam (al-Ḥalāl wa al-Ḥarām fī al-Islām)*, whose intended audience was Muslims (but also non-Muslims) living in Europe and the United States, and which was destined to be translated into English. Yet, al-Qaradawi’s book quickly became also a classic introduction to Islamic jurisprudence for believers living in Muslim-majority countries. As he wrote in the preface, it could potentially enlighten any Muslim asking the following questions: “What is lawful to me? What is unlawful to me?”¹

THE DISTINCTION BETWEEN ACTS OF WORSHIP
AND SOCIAL INTERACTIONS IN CONTEMPORARY
ISLAMIC LEGAL KNOWLEDGE

In *al-Ḥalāl wa al-Ḥarām fī al-Islām*, al-Qaradawi posits permissibility as the basis for everything (*al-aṣl fī al-ashyāʾ al-ibāḥa*)² in the sphere of social interactions (*muʾāmalāt*) that are also called usages (*ʿādāt*). Put in another way, this would be permissibility for any deed that does not belong to acts of worship (*ibādāt*). Understood as the “first foundational principle” established by Islam, permissibility reflects the relationship to all things beneficial (*manāfiʾ*) wanted by God for humans, as exemplified in *Sūrat al-Baqara*, 29: “He who created for you all of that which is on the earth.” God did not create all these things for humans to then forbid the latter to gain benefit from them. That is the reason why “the circle of the unlawful deeds in the revealed law of Islam is extremely tiny, while the circle of the lawful deeds is extremely large.”³ Authentic texts with an explicit prohibition are very few, which leaves all other aspects of existence in the sphere of permissibility and divine exoneration (*dāʾ irat al-ʿafw al-ilāhī*), as the saying of the Prophet puts it: “What God has authorized in His Book is lawful, and what He forbade is prohibited. And what He did not speak about is exoneration (*ʿafw*). Accept from God His exoneration, for God does not forget anything. And then, he recited the verse (*āya*) from *Sūrat Maryam*, 64, ‘Your Lord was never forgetful.’”⁴

For al-Qaradawi, the fundamental truth of religion lies in God’s worship (*ibādāt*) according to what has been prescribed by Him in the revealed law, which leaves no room for innovations. Yet, usages and interactions (*ʿādāt wa muʾāmalāt*) are not instituted by God but by the people, and shariʿa came to correct them (*muṣaḥiḥan lahā*) and as a way to refinement and virtuous education.⁵ Although not as foundational and generative as for al-Qaradawi, the distinction between two different instantiations of shariʿa related to acts of worship and social interactions was relied upon by the jurist Ibn Taymiyya (d. 1328) in his book on legal principles and precepts, *al-Qawāʾid al-Nūrāniyya*.

For Ibn Taymiyya, there may be two categories of deeds. One included “the acts of worship through which (Muslims) perform religion in the right way and usages (*ʿādāt*) needed for their worldly life. We know, by operation of induction from the shariʿa’s sources (*istiqrāʾ uṣūl al-shariʿa*), that the acts of worship which God prescribed as obligatory or recommended can be established only through the revealed law.” The second category pertains to “interactions and usages,” where “the foundational principle . . . is the absence of prohibition (*ḥaḍr*). . . . That is the reason why Ahmad [Ibn Hanbal] and other scholars of the people of hadith say: ‘The foundational principle in the acts of worship is fixed and settled (*tawqīf*), and nothing can be legislated upon in this matter outside what God legislated The foundational principle of usages is exoneration (*ʿafw*), and nothing can be

prohibited in this matter unless it has been deemed unlawful by God.” For Ibn Taymiyya, this distinction between the two forms of lawfulness “is a great and useful regulating principle (*qā’ida ‘aẓīma nāfi‘a*), and if agreed upon, allows us to say: the acts of selling, donating and renting and other forms of usages that people need for their living (*ma‘āsh*)—eating, drinking and dressing—are all usages for which shari‘a came for virtuous behavior (*al-ādāb al-ḥasana*). . . . Hence, the people may engage in whatever trading and rental activities they want, the same way they eat and drink as they want, as long as any of these activities are not prohibited by shari‘a, even if some of them may be recommended or reprehensible.”⁶

Ibn Taymiyya’s formulation suggests that individuals’ deeds are a priori lawful in the sphere of social interactions and transactions, unless there is a clear prescription in the Qur’an or the Sunna. While social interactions are not fixed in advance and are open to diversity and change, individuals can do only what the rules prescribe regarding acts of worship. For example, they cannot add or subtract a prayer among the everyday five obligatory prayers, or say that it is an obligatory rule to fast more (or less) than the whole month of Ramadan. From this perspective, the logic of jurisprudence entails distinct articulations between rule and deed. On the one hand, the law tells the self in great minutiae what to do to worship God, while on the other hand, it does not tell him what to do when he is interacting with others, but only what is forbidden. This distinction enlightens anew the formative role of worship in relationship to deeds, for the former are not subject to change (*thawābit*), and are expected to shape Muslim selves in their changing actions and interactions with others in the world. However, although jurisprudence does not give the self a positive prescription regarding what his deeds should be in the sphere of interactions, he can always address the revealed law by asking a scholar-mufti to assess the lawfulness of his past or future deeds.

While for Ibn Taymiyya, the distinction between the two different logics generated by shari‘a in regard to worship and social interactions was an introductory remark of the section dealing with contracts, it became, for al-Qaradawi, a foundational principle for Islamic jurisprudence, and the way each Muslim should relate her life and deeds to shari‘a.

Besides the space of divine exoneration where permissible deeds take place, Islamic jurisprudence, according to a well-known principle, may allow Muslims to commit prohibited acts out of necessity (*al-ḍarūra tubīḥu al-maḥẓūrāt*). For al-Qaradawi, this principle takes into account the necessities of life (*ḍarūrāt al-ḥayāt*) and has authorized humans to have recourse to the prohibited in extenuating (*qāhira*) circumstances. However, unlike the space of exoneration that is already inscribed in the lawful, necessity does not change the rule of prohibition, but acknowledges the possibility of its suspension in a specific case. Muslims can never take this suspension for granted and should always look for the best way to change the circumstances that would allow for the rule of prohibition to be respected

again. Moreover, the deeds allowed by the suspension of the rule are not meant to be enjoyable or unrestricted, but should be proportionate to the necessity involved in the case (*al-ḍarūra tuqaddaru bi-qadrihā*).⁷

As in previous works of jurisprudence written in the first half of the twentieth century,⁸ the structure of al-Qaradawī's *al-Ḥalāl wa al-Ḥarām* exemplifies the contemporary concern for the lawfulness of social interactions (*mu'āmalāt*), as it does not include any section on the acts of worship but instead articulates substantive rules formulated in previous books of jurisprudence to forms of life and principles of conduct and distributed according to subdivisions echoing the language constituted around the "social" as it emerged in the modern context. These categories include "the lawful and the unlawful in the private life of the Muslim (*al-ḥayāt al-shakhṣiyya*)," "the lawful and the unlawful in marriage and family life (*ḥayāt al-usra*)," and "the lawful and the unlawful in the public life (*al-ḥayāt al-āmma*) of the Muslim." While the audience of concise premodern manuals of jurisprudence (*matn*) would be students trained in spaces of knowledge transmission such as mosques, who would usually memorize their content in order to guide the local community in a non-literate society, books as al-Qaradawī's, and more generally contemporary forms of writing such as the journal or the newspaper, are destined to be read by Muslims with access to education in a schooling system organized and regulated by the state. These more recent forms of writing would also be distinct from other premodern genres such as voluminous commentaries (*sharḥ*) of the basic manual, which would be written for jurists looking to expand their knowledge of jurisprudence. While these commentaries articulate the rules formulated in the manual to the body of knowledge produced by previous and higher ranked scholars within the juridical school to which they belong, scholars like al-Qaradawī are not concerned with re-inscribing their own writing within a previous chain of jurists of one of the main four juridical schools of Sunni Islam. Instead, most of them authorize themselves directly from the Qur'an and the Sunna.

Two generations after the rise of the *Salafiyya*, al-Qaradawī and other scholars do not need to do again the work of critique of *madhhab* (school)-based juridical reasoning that was already done by Muhammad Abduh at the end of the nineteenth century. Their audience does not expect them to do so. This does not mean, however, that modes of reasoning attached to the *madhhab* are no longer relevant in contemporary Islamic legal knowledge. Rather, the transmission of *fiqh* in Al-Azhar, but also in several centers of Islamic knowledge in the Muslim world, is based on the *madhāhib* (schools). Although Al-Azhar has a tradition of teaching the four main *madhāhib*, it is the Hanafi *madhhab* that is the most widely taught, as it is the one that is still mainly relied upon in Egypt. For purposes of control, cohesion, and arbitration between disputes, states would claim the continuous commitment to the "historical" *madhhab* of the country (in Morocco, the Maliki *madhhab*). Hence, although writing on Islamic legal issues from a Salafi perspective (as al-Qaradawī

does) is consistent with the dominant trends of the contemporary Muslim public, it nevertheless coexists with the affiliation to juridical schools claimed by several jurists. Moreover, relying on a Salafi method based primarily on the Qur'an and the Sunna does not mean rejecting everything coming from the *madhāhib*. Rather, as we will see below, al-Qaradawi, in other writings, relies on opinions from the schools to formulate rules in fatwas dealing with Friday prayer in non-Muslim contexts.

More than forty years after the publication of *al-Ḥalāl wa al-Ḥarām fī al-Islām*, at the request of the Muslim World League, al-Qaradawi wrote a new book addressing primarily Muslims residing in non-Muslim countries in which he suggests that the rules dealing with their lives may be considered as a new field called "jurisprudence of Muslim minorities" (*fiqh al-aqalliyyāt al-muslima*). For al-Qaradawi, shari'a addresses each Muslim individual, who may be "a ruler or a subject, a man or woman, rich or poor, in the territory of Islam (*dār al-islām*) or outside of it, in a Muslim society or a non-Muslim society." He writes that "Muslims, either in the Orient or the Occident, in Islamic countries or outside of them, in a country ruled by Islam or by secularism, are required to orient their lives according to the revealed law of Islam to the extent of their possibilities."⁹ Shari'a is not utopian but realistic (*wāqi'iyya*), for it takes into account the reality of humans (*wāqi' al-insān*) and is aware of the effects of time, place, and social environment on the people. Shari'a does not require hardship (*'usr*) but takes into account the Muslim's circumstances (*zurūf*) and her needs wherever and whenever she lives.

Al-Qaradawi's approach to shari'a relies again on the distinction between acts of worship (*'ibādāt*) and social interactions (*mu'āmalāt*), for as long as Muslims can do the former, notably the acts of prayer, they are following shari'a rules, even in non-Muslim countries. Now, in these countries, the problem for Muslims is mainly related to interactions and transactions (including marriage) with Muslims and non-Muslims in a non-Muslim social environment. Here, al-Qaradawi formulates a set of foundational rules and principles making explicit his mode of legal reasoning. Among these principles, al-Qaradawi recalls that shari'a does not put humans in difficulty but, when properly understood, enables Muslims to remove hardship (*raf' al-ḥaraj*) that may be associated with it. The task of scholar-muftis is precisely to be faithful to the principle of ease (*yusr*) rather than difficulty (*'usr*) when it comes to the formulation of rules to be followed by Muslims.

Although a mufti may take into account the local context in the production of rules regarding worship, he would do so differently than when dealing with interactions and transactions. When dealing with acts of worship, the obligatory prayer (*ṣalāt*) as such can never be waived for qualified Muslims. However, for al-Qaradawi, who relies both on Hanbali and Maliki jurisprudence, accommodations can be made regarding the time of the collective Friday noon prayer (*ṣalāt*

al-zuhr). In several Muslim countries, Friday is either a non-working day (as in Egypt) or a day in which people can leave their work for the noon prayer. Since Muslim minorities live in countries with a subdivision of time that does not allow them to perform the noon prayer as usually prescribed, al-Qaradawi's interpretation of the relevant textual sources allows Muslim minorities to perform it either before or after the prescribed time.¹⁰

For al-Qaradawi, the jurist-scholar should have a thorough knowledge of all dimensions of reality and rely on other forms of non-juristic expertise before formulating a rule. For example, he should take into consideration what sociologists and economists say about the importance of owning a house for Muslim families living in the West as a way to preserve familial cohesion and to reduce financial hardship. In this case, the scholar-jurist should authorize Muslims to contract a loan from banks because it is a necessity (*ḍarūra*) that supersedes the rule forbidding debt usury (*ribā*). Here, it is the task of social scientists to assess the necessity of owning a house for social and economic reasons.¹¹

More generally, one central aspect of the reality that should be taken into account by the scholar-jurist regarding the jurisprudence of Muslim minorities is their twin belonging to the Islamic community, which includes, on the one hand, "each Muslim in the world whatever may be her citizenship, tongue, race, or class," and on the other hand, the society in which they live and "belong" (*yantamūna ilayhi*), for the scholar-jurist should always preserve a balance between these two dimensions. Hence, the reality in which Muslim minorities live calls for a "specific jurisprudence" (*fiqh khās*), "the jurisprudence of minorities," the same way other forms of specific jurisprudence have been constituted in relationship to financial, economic, or political issues before.¹² The very operation of naming it "jurisprudence of minorities" is not only a way to institute it as a sub-body of knowledge distinct from other sub-fields of jurisprudence on the basis of its object under the umbrella of "general jurisprudence" (*fiqh 'ām*), but is also a way to exemplify the open-ended process of rule-formulation in the sphere of interactions (*mu'āmalāt*) that is constitutive of social reality.

THE CONSTITUTION OF THE REAL AS AN EPISTEMIC PROBLEM FOR ISLAMIC LEGAL KNOWLEDGE

As do most contemporary Islamic scholars, in his legal texts al-Qaradawi posits a fundamental distinction between jurisprudence (*fiqh*) and reality (*wāqi'*) in which reality is *external* to jurisprudence, and yet *internal* to it. From this point of view, reality is not the mere space in which shari'a rules are applied, it is also constitutive of jurisprudence itself, for the scholar-mufti needs to have a thorough knowledge of contemporary social life and its complexity in order to formulate a legal opinion addressing a specific case. Reality itself becomes part of rule production

rather than the sphere where a blind application of an available stock of fixed rules occurs.

In premodern times, classical scholars would take into account local practices in the production of rules, as Shafi'i famously did when he had to deal with a new social environment after he moved to Egypt from Iraq, an example frequently cited by contemporary and classical scholars. The jurisprudential category of "usage" (*'urf*) has been used by muftis to formulate legal opinions taking into account the habits of local communities. Other scholars would join Ibn al-Qayyim in stressing the fact that the mufti should "understand and grasp the real" (*fahm al-wāqi' wa al-fiqh fihi*) in each specific case as a process part of rule formulation (in relation to an event, an occurrence rather than a representational understanding of reality)¹³ for it is only through this knowledge that he can relate the case to the appropriate prescription to be applied in the social world. While mentioned in classical books of jurisprudence in relationship to cases to be adjudicated, the category of "the real" (*wāqi'*) became increasingly used by Islamic jurists in modern times in connection to the emergence of discourses about "the social," "the economy," and governmentality in colonial administration, and in relation to new forms of knowledge.

The constitution of the real as a representational object of knowledge and intervention entailed the production of a new legal order by the state and its jurists as well as the exclusion of Islamic jurisprudence (*fiqh*) from or its subjugation to it (for example in family law). For Islamic scholars the new "real" did raise questions about the very operation of rule production in Islamic jurisprudence (*fiqh*) and its effectiveness—but never about the relevance and significance of shari'a. Of course, in debates with Orientalists or intellectuals trained in Western universities, Islamic scholars of the beginning of the twentieth century (notably Muhammad Abduh) had to respond to the question: "Is Islam compatible with reason and modern civilization?" But *within* the community of Islamic scholars, the debate was about *how* rules of Islamic jurisprudence grounded in shari'a should be formulated, and not whether or not shari'a is able to regulate modern life. In other words, disagreement between Muhammad Abduh and Rashid Rida and other Islamic scholars of their time was epistemological.

For Abduh, the social transformations brought about by the colonial order of the end of the nineteenth century deepened the gap between the rules of jurisprudence as formulated by Islamic jurists of his time and the new "reality." For him, the rules condemning these changes, for example when related to the new banking system, have weakened the Muslim community, as it was not able to develop its economy and wealth and was an easy prey for colonial powers. Even if debt's usury (*ribā*) is explicitly forbidden in the shari'a's foundational texts, it is in the higher interest of the community to allow it following a shari'a principle, relied upon by classical Islamic scholars, and stating that the jurist should always prescribe the lesser of two evils (in this case, waiving a shari'a rule in order to avoid colonial subjugation is part of

shari‘a itself). For Abduh, the right attitude to have toward modern changes is neither to reject them nor to accept them totally but to examine them not on the basis of imitation (*taqlīd*) of what the juridical schools of Islam (*madhāhib*) say about it but on the basis of a proper direct understanding of shari‘a’s sources. Although Abduh is known for having authorized new practices that were rejected by most scholars of his time, one should note here that these very legal opinions were also a reenactment of shari‘a’s authoritativeness, for they occurred in the name of the latter.

Abduh, and most importantly Rashid Rida, did not only contest the jurisprudential rules formulated by scholars faithful to imitation within each juridical school; they also “recalled” the set of foundational principles and the corpus of texts upon which truth or falsity of claims may be assessed. For Rida, formulating these principles was also literally a “reduction,” for there had been “too many books” and “too many jurisprudential rules (*al-aḥkām kathurat*) produced within the schools and their branches”¹⁴ that made it more and more difficult for Muslims over centuries to learn Islam’s teachings. This operation of “reduction” was not only a way to (re)state what should be agreed upon, but most importantly, to state the scope of legitimate disagreement within the community of scholars. In a jurisprudential context structured only around schools, disagreements between jurists only on the basis of the preferred/dominant opinion (*rajaḥ*) of the school they belong to are considered legitimate. But from a Salafi perspective, as advocated by Rida, they cannot be considered receivable if they are not supported by evidence from the Qur’an and authentic hadith. In the latter case, disagreements may still occur, but generally are over the right interpretation of the meaning of passages from the Qur’an or of authentic hadith.

Hence, the very act of reformulating a set of foundational rules (*uṣūl*) upon which jurisprudential rules regulating collective life may be produced is a response to the constitution of “the real” as an epistemic problem for Islamic legal knowledge, which is itself related to the way scholars-jurists perceived the world in the late nineteenth and early twentieth centuries. It re-instantiated shari‘a less as a set of fixed substantive rules than as a generative relationality between the foundational texts and the world mediated by the jurist-scholar. In order to illustrate my point more extensively, I would like to study more closely the shift between pre-modern and modern forms of Islamic legal knowledge through an analysis of the logic of jurisprudence in eighteenth- and early nineteenth-century Egypt before returning to the twentieth century’s Islamic scholars.

ISLAMIC LEGAL KNOWLEDGE AND THE JURIDICAL SCHOOLS IN PRECOLONIAL TIMES

In precolonial times, beginning mainly from the second century of Islam, the transmission of jurisprudence occurred within communities of knowledge

affiliated to one juridical school among the main four in Sunni Islam. In a context where the everyday role of the scholar was to guide the local community, give legal opinions, and teach its members Islamic legal rules, the *matn* (manual) describing the deeds to be performed and their conditions of validity was the most useful text. As it was usually destined to be taught and memorized by aspiring jurists, its main expected quality was concision (*ikhtiṣār*). These manuals encapsulated the rules considered the most widely used by, or the most important for, the juridical school, and what a scholar able to enlighten the people was expected to know. For example, *Kanz al-Daqaʿiq*, one Hanafi *matn* widely used in the nineteenth century in Egypt and mentioned by Muhammad Abduh as an example of “decadent” scholarship, did not display demonstrative forms of writing and the sources out of which the rules were derived. Its purpose was not to prove the truth of the rules but to allow for their easy appropriation by the scholar asked to give practical guidance.

However, the *matn* is not isolated from other forms of writing but is glossed in commentaries, and related to collections of juridical opinions (*fatwas*). A *matn* may be “strengthened” by a commentary (*qawāh al-sharḥ*), or even a commentary of a commentary that would make explicit the sources out of which the rules are derived, and include a hierarchy of authoritative voices *within* the juridical school leading to the eponymous scholar-jurist—that is, one of the four Imams. One of the most important commentaries of the Hanafi school is *Hāshiyat Ibn-ʿAbidin*, a commentary on *Al-Durr al-Mukhtār* by Haskafi, which is itself a commentary on *Tanwīr al-Abṣār*, a *matn* by the sixteenth century jurist Tamartashi. Commentaries are not only ways to expand the meaning of the *matn*, or its primary commentary (through definitions and references to other works), or texts exposing differences of opinion and correctives to rules and claims made by other scholars of the same school. They are also works adding legal opinions to the jurisprudence of the school in response to new cases. As the early nineteenth-century scholar Ibn ʿAbidin put it: “I added [to Haskafi’s commentary] several branches (*furūʿ*). . . , unveiled the problematic questions, and showed the difficult cases (*kashf al-masāʾil al-mushkila wa bayān al-waqāʾiʿ al-muʿdila*).”¹⁵

In a context where the production of knowledge is structured around the juridical schools, one does not need to master the procedures of extraction of the rules from the foundational sources (Qurʾan, Sunna, consensus and analogical reasoning) to be recognized and authorized as a scholar-jurist (*faqīh*). The latter name-title is deserved when one has memorized the rules related to the branches of jurisprudence (*hifẓ al-furūʿ*). It does not necessarily imply that the person knows the sources and procedures out of which these rules were produced.¹⁶ In this case, and in order to avoid any confusion with higher scholarly authorities, the scholar-jurist is also known as a *muqallid* (imitator). However, this does not mean that jurisprudence is autonomous from shariʿa’s foundational sources. Rather, the rules

are known to have been derived from them, but the *muqallid* is not required to display or to know the hermeneutical reasoning behind them.

Although in the premodern period jurists would claim a strong affiliation to their juridical school, they would acknowledge the existence of multiple juridical schools as a reality, as well as the possibility of disagreement and error that this reality entails. Ibn ‘Abidin, for example, wrote that “if asked about our school or the school of another jurist, we would respond: [we assume] that our school is right but is not free from errors, and [we assume that] the other school is wrong but does not exclude right knowledge.”¹⁷

In the premodern context, procedures of truth seeking in jurisprudence were grounded in the knowledge produced within each of the four main juridical schools according to a hierarchy of sources, distinct from the foundational shari‘a sources. In the Hanafi school, the hierarchy of sources also known as the “classification of issues” (*ṭabaqāt al-masā’il*) is articulated around three categories: (i) *Zāhir al-Riwāya* (reliable transmission), which includes six books authored by Muhammad Ibn al-Hasan al-Shaybani (*al-Mabsūṭ*, *al-Ziyādāt*, *al-Jāmi‘ al-Ṣaghīr*, *al-Sayr al-Ṣaghīr*, *al-Jāmi‘ al-Kabīr*, and *al-Sayr al-Kabīr*); (ii) *Masā’il al-Nawādir*, comprised of four books *al-Kisāniyyāt*, *al-Hārūniyyāt*, *al-Jurjāniyyāt*, and *al-Rāqīyyāt*, also authored by Muhammad Ibn al-Hasan al-Shaybani, (iii) *al-Wāqī‘āt* (also called *Nawāzil* or *Fatāwā*), which includes several books such as *Nawāzil al-Samarqandi*, *Majmū‘ al-Nawāzil al-Natifi*, and *Fatāwā Qādi Khān*.¹⁸

For the Hanafi school, this hierarchy of sources is built upon the reliability of transmission of the legal rulings “formulated by the three” (*qawl al-thalātha*), namely Abu Hanifa and his two closest disciples, Abu Yusuf and Muhammad Ibn al-Hasan al-Shaybani. The first category of sources includes the most reliable sayings of the three scholars through multiple or well-known chains of transmission (*mutawātira aw mashhūra*).¹⁹ The second category refers to rulings attributed to the three figures of the school that are not as reliable as the ones found in the first category; for example, they might have been transmitted through only one chain rather than multiple or well-known ones. The third category encompasses the legal opinions formulated by later jurists (*al-mujtahidūn al-muta’akhirūn*) in response to questions for which they could not find previous statements (*wa lam yajidū fihā riwāya*) in the first two sources.²⁰

In order to be able to produce fatwas, each jurist had to know enough about the scholar-jurists of his school and situate each one in “the hierarchy of jurists” (*ṭabaqāt* or *marātib al-fuqahā*)²¹ which included seven classes: (i) the jurists able to produce rules from the shari‘a’s foundational texts (*ṭabaqāt al-mujtahidīn fī al-shar‘*), usually including the four Imams whose names are associated with each juridical school; (ii) the jurists (like Abu Yusuf and Muhammad Ibn al-Hasan al-Shaybani) able to produce rules *within* the juridical school following the principles set by their master Abu Hanifa (*mujtahidīn fī al-madhab*) even if there may be

differences of opinion with him regarding cases and branches (*furūʿ*); (iii) the jurists able to produce rules exclusively for new cases (*muḥtahidīn fī al-masāʾil*) for which there is no textual precedent, and for which they follow the higher ranked jurists in the school; (iv) the “imitators” (*muqallidīn*) who are not able to perform any form of *ijtihād* but can still “extract” rules for cases (*aṣḥāb al-takhrīj*) for which there are ambiguous or unclear rules formulated by the higher ranked jurists; (v) the “people of juristic preference” (*aṣḥāb al-tarjīḥ*) who are *muqallidīn* able to show what is the preferable view between different views on the same issue within the school; (vi) the *muqallidīn* able to differentiate between the weak and the most reliable transmitted views of Abu Hanifa and his disciples (who include the authors of basic manuals such as *Al-Kanz*, mentioned earlier); and (vii) the *muqallidīn* who do not have the abilities of the higher ranked jurists and are unable to differentiate between “the slim and the fat.”²²

In this epistemic structure, social reality would be articulated into the body of authorized legal knowledge through the collection of recent fatwas. The incremental integration of recent cases would reenact the hierarchy of the sources of school-based legal knowledge, which itself reflects the hierarchy of scholar-jurists. Their concern was not whether or not Islamic legal knowledge would constitute an obstacle for social “change” and “new” forms of collective organization (as was the case for late nineteenth and early twentieth-century scholars), but whether or not recent legal opinions about new cases would be authoritative enough to be integrated into the existing hierarchy of knowledge. From this perspective, the present is a way to relate to the past rather than the other way around. The past is not constituted a way “to understand” or “explain” the present, as modern forms of knowledge and sensibilities would do. Rather, it is the present that is constituted as a way to reenact the truth of, and the bond to, the foundational past.

In the modern context, knowledge is expected to describe the very “reality” that it has constituted as its object. Forms of knowledge that would not be able to tell us something about the present and the way we should envisage the future are considered “useless” and “outdated.” Contemporary Islamic legal knowledge became the locus of the same expectations associated with social sciences. The thought of the late-nineteenth and early twentieth-century scholars Muhammad Abduh and Rashid Rida exemplify these new demands put on forms of knowledge regarding the “new reality.” For them, opening up a space for the “new reality” as a representational object *within* Islamic legal knowledge was not possible by keeping the inherited school-based forms of Islamic legal knowledge as well as their hierarchy of sources and jurists. Their scholarly project consisted in reformulating the authoritativeness of shariʿa by “neutralizing” the authoritativeness of *madhab*-based forms of Islamic legal knowledge.

While *madhab*-based Islamic legal knowledge was subjugating the present to the past because its jurists did not have to deal with reality as an epistemic problem

and had no doubt that the past was relevant for the present, the thought of both Muhammad Abduh and Rashid Rida was the locus of contradictory demands in a time of crisis: making the past relevant to the present while still subjugating the latter to the former. From their perspective, this could be done only by interrupting the inter-generational temporality of transmission and by reclaiming the foundational temporality of revelation. That is the reason why their work could neither be recognized as part of the work of their contemporaries following the *madhāhib* nor as part of “modern” forms of scholarly discourse, but only as a kind of hybrid and unachieved intellectual project.²³

All subsequent scholarly Islamic projects of the twentieth century, in a way very similar to Abduh and Rida’s writings, are the locus of tensions regarding the relationship between past and present. The very words *tajdīd* (renewal), *iṣlāḥ* (reformism), and *iḥyāʾ* (revivification) relied upon by scholars to describe their own action exemplify the ambivalent temporality attached to contemporary forms of Islamic legal knowledge. Rejecting the inter-generational transmission because it does not speak to “the real” is already giving some authority to the present. And yet, the same present, whose authoritativeness has been acknowledged by the very operation of critique of the transmitted knowledge, should be subjugated to the past for the revealed law and its foundational texts to remain authoritative. In other words, contemporary Islamic legal knowledge (and more generally contemporary Islamic discourse), claims the twin authority of foundational shariʿa as well as *the social reality of the present*. That is the reason why contemporary Islamic scholars and Islamic movements have been described by contemporary scholarship either as “traditional” or “modern.” This transformation is one of the most important shifts between previous and unprecedented forms of Islamic legal knowledge, and, more generally is constitutive of the very distinction between the “premodern” and the “modern.”

The twin authority of past and present in contemporary Islamic knowledge is exemplified in al-Qaradawi’s jurisprudence and his attempt to articulate *tajdīd* (renewal) with *aṣāla* (authenticity). In his *Islamic Jurisprudence between Authenticity and Renewal* (*al-Fiqh al-Islāmī bayna al-Aṣāla wa al-Tajdīd*), first published in 1986, al-Qaradawi raises questions about the relationship between the “old” (*al-qadīm*) and the “new” (*al-jadīd*) that are themselves words associated with unprecedented meanings enabled by a modern conception of time: “Authenticity does not mean to withdraw within the old and to reject everything that is new, whatever harm is in the old and whatever good is in the new.”²⁴ Although al-Qaradawi condemns the refusal of “creativity” (*ibdāʾ*) and personal effort (*ijtihād*) by those who stick to the “old,” he is also critical of the position accepting anything “new” on the theory that it would necessarily be “progress” and a source of good. Al-Qaradawi is self-conscious about the emergence of these concerns in the modern context, writing that “sound reason cannot accept the mere passing of time as

the judge of the harmfulness of things.”²⁵ He suggests that renewal does not mean to destroy the old or to give it up, but instead to preserve it, improve it, and rehabilitate what has been damaged in it. Yet, any renewal in Islamic jurisprudence requires understanding the requirements of “the present time” (*hadhā al-‘aṣr*) whose “nature is rapid change” (*al-taghayyur al-sarī*).²⁶

THE EASE OF ISLAM AND THE SILENCE OF THE LAW

Published in 1928, Rashid Rida’s book *Yusr al-Islām wa Uṣūl al-Tashrī‘ al-Islāmī* (*The Ease of Islam and the Sources of Rule Production in Islam*) is a compelling example of the way the “real” as a new category raised epistemological and methodological questions for Islamic legal scholarship that would inform the work of later scholars. As the title suggests, Rida’s book is an attempt to show that shari‘a was not instituted to cause undue hardship (*‘usr*) but is meant to accommodate human life and the context in which its rules are formulated and applied. However, if the notion of ease (*yusr*) implies that the rejection of all forms of “modern” change has no ground in shari‘a, it does not mean “absolute permissibility” (*ibāḥa muṭlaqa*). Rather, it should be understood as “the path-method of the middle ground” (*manhaj al-waṣaṭ*) between, on the one hand, the elites “supporting Western civilization and positive legislation (*qawānīn waḍ‘iyya*) and for whom Islamic law is no longer valid for our time,”²⁷ and, on the other hand, Islamic scholars who remain prisoners of imitating their juridical school and reject all forms of modern knowledge, technologies, and social organization on the ground that they come from non-Muslims.

For Rida, the new real alludes to sciences, industry, “order” (*niẓām*), “instruments of power” (*wasā’il al-quwwa*), and more generally to forms of materiality that cannot be contested since they are made self-evident, and can be grasped, by sensorial perception (*mushāhadāt ḥissiyya*).²⁸ In a context where the most important of these changes were rejected by the scholars sticking to their juridical school’s dominant opinion, the work of the right jurisprudential method is to authorize these changes, for they are part of material life and competition between nations, unless there is an unequivocal textual passage from the Qur’an, or an unequivocal and authentic text of the Sunna, prohibiting it.

Rida posits the fundamental distinction between acts of worship (*‘ibādāt*) and social interactions (*mu‘āmalāt*) that was subsequently relied upon by al-Qaradawi in his jurisprudential works. As a way to reach happiness in worldly life as well as in the hereafter, the revealed law prescribes beliefs and acts of worship that do not vary according to time and place but leaves “worldly matters” (*al-umūr al-dunyawiyya*) open to change in time and space in accordance with humans’ interests (*maṣāliḥ al-bashar*).²⁹

Rida’s understanding of the differentiation between acts of worship (*‘ibādāt*) and social interactions (*mu‘āmalāt*) is grounded in a prior distinction between

utterance and silence in the revealed law, and more precisely, between what God and the Prophet Muhammad said and what neither God nor the Prophet spoke about. Rida relied on the same hadith quoted decades later by al-Qaradawi that attributed to Qu'ranic silence a meaning and a normative status within shari'a.³⁰ The space of present and future deeds regarding interactions (*mu'āmalāt*) is not preempted by shari'a's positive or negative injunctions for, in the silence of the law, there is no clear prescription to do (as in worship) nor a clear prohibition from doing (as in interactions). Rather, the silence of the law exemplifies the ease (*yusr*) of Islam. It is a call to act in the world, and speaks for it.

For Rida, previous jurists did not grasp the meaning of silence for jurisprudence and opened up a space of excessive questioning (*kathrat al-su'āl*). This statement may seem paradoxical, as it is through the possibility of a question addressed to a scholar-mufti (*istiftā'*) that the very operation of rule production (*iftā'*) is made possible over time and space when there is no available textual evidence from the Qur'an and the Sunna. Yet, it is precisely in this sphere of textual silence that permissibility occurs, for this silence addresses Muslims and tells them what God intended for them. Moreover, if we recall that for Rida, a reduction to a set of fundamentals is necessary to differentiate between true and false claims in Islam, everything that disturbs this reduction keeps Muslims away from the right practice of Islam. Hence, the excessive questioning gesture engendered an inflation of jurisprudential rules that have no ground in the Qur'an or Sunna, but were produced by an uncontrolled use of analogical reasoning (*qiyās*). As exemplified in Rida's legal thought, the very constitution of the "real" as a problem for Muslim life and Islamic legal knowledge is itself part of the jurisprudential labor consisting in (re)formulating the generative rules (notably the grounding in the textuality of the Qur'an and the Sunna) through which substantive rules may be produced in accordance with "the needs" of the time and its space.

Yet, the "real" is not only constituted as an epistemic category calling for revisions in jurisprudential method, but also a space of intervention. The production of the right Islamic legal knowledge is not circumscribed to a scholarly pursuit, but it is intertwined with its ability to shape the life of contemporary Muslims as exemplified by the notions of *iṣlāḥ* ("reform") and *tajdīd* ("renewal"). In contrast to what he described as the imitators of the juridical schools and to the intellectuals inspired only by the West, Rida presents his own approach as part of "*iṣlāḥ*" and "*tajdīd*" whose goal is "the revivification of Islam (*ihyā' al-islām*)" by relying on the foundational texts and exemplarity of the righteous predecessors.³¹ Here, *iṣlāḥ* means the act of correcting the "wrong" jurisprudential method (and more generally "wrong" practices) as well as the act of doing the good in the world, for the latter is possible thanks to the right knowledge. The man carrying out the enterprise of *iṣlāḥ* is the *muṣliḥ* or the *ṣāliḥ* (derived from the same root ṣ-l-ḥ), who follows the model of the "righteous predecessors (*al-salaf al-ṣāliḥ*)."³² *Tajdīd* does

not consist in producing the new, but rather means the act of giving strength and vitality to Islam and its ability to guide the life of the community of faith in the world. However, as we saw above, from Rida's perspective, *iṣlāḥ* and *tajdīd* do not occur only in reformulating the right utterances of the revealed law but also in the possibilities opened up by its silences. *Iṣlāḥ* and *tajdīd* can be considered precisely as a way to revive the revealed law through a (re)distribution and (re)articulation of the spoken and the unspoken in it.

THE SUSPENSION OF ISLAMIC LEGAL KNOWLEDGE IN THE PRESENT

Another way to understand the constitution of the present and the "new real" as an epistemic problem for Islamic legal knowledge is to look briefly at the ways in which scholars like Sayyid Qutb suspended the very production of Islamic knowledge. Because Qutb's position is not shared by almost any contemporary Islamic scholars, it allows us to see precisely how the real-present is generative for Islamic jurisprudence.

For Qutb, it is no longer possible to address *shari'a* and make it speak through jurisprudence (*fiqh*) because societies where Islam has been historically the religion of the majority of the people are no longer Islamic. Islamic jurisprudence can be alive only if it is grounded in Islamic forms of life in an Islamic society already existing in the present (*mujtama' islāmī wāqī'i, mawjūdun fi 'lan*). Contemporary societies are facing problems and raising questions about forms of life that do not belong to the "Islamic society," for the latter existed in the first years of Islam, or may exist in the future, but does not exist in the present. One cannot expect Islam to come with jurisprudential solutions (*ḥulūl fiqhiyya*) for a society that does not know Islam or has left it (*hajara al-islām*). From this perspective, the ability of jurisprudence to constantly produce new rules over time as a response to new situations and problems generated by contemporary life is not relevant; these situations are not "Islamic" and the problems in question would not arise in a "true" Islamic society.³²

For Qutb, the transmission of Islamic legal knowledge from the past to the present is no longer possible not merely because its rules are not effective, but because Islam is no longer part of the real-present. In present times, Muslims live in a state of spiritual and moral defeat exemplified by the constitution of "reality," rather than Islam, as an authoritative guide for their life: "The defeat consists in considering that the 'real' (*al-wāqī'*), whatever it may be, is the basis [of everything] and the state which God's law should catch up with! But for Islam, God's path and His law come first and are the founding principles that should be followed by the people and for which the real needs to change in order to conform to [it]."³³

Unlike al-Qaradawi, who established a new legal sub-field about the jurisprudence of Muslim minorities in non-Muslim-majority countries, particularly in the West, and for whom shari‘a speaks first to Muslims whatever their time-space, Sayyid Qutb writes: “It is a laughable absurdity that we try for example to formulate Islamic legal rules dealing with the social and economic contexts in America or Russia.”³⁴ While Islamic scholars like Rashid Rida or Yusuf al-Qaradawi have constituted the real as a new major epistemic problem for Islamic legal knowledge reenacting shari‘a as a generative law *for* the present, particularly in the field of social relations and interactions (*mu‘āmalāt*), Sayyid Qutb suspends the articulation of jurisprudence with time because doing so would mean to acknowledge that the real is authoritative. For Rida and al-Qaradawi and almost all contemporary Islamic scholars, the jurist-scholar needs to respond to the contradictory demands of the past and the present, but for Qutb, there is no possible accommodation or negotiation because it is *either* shari‘a *or* the real that is authoritative.³⁵

THE PAST, THE PRESENT, AND THE DISCURSIVE TRADITION

The constitution of the present as an epistemic problem for jurisprudence (*fiqh*) raises a conceptual question regarding the status of temporality in Islamic legal knowledge. In *The Idea of an Anthropology of Islam*, Talal Asad defines Islam as a “discursive tradition” that

consists essentially of discourses that seek to instruct practitioners regarding the correct form and purpose of a given practice that, precisely because it is established, has a history. These discourses relate conceptually to a *past* (when the practice was instituted, and from which the knowledge of its point and proper performance has been transmitted) and a *future* (how the point of that practice can best be secured in the short or long term, or why it should be modified or abandoned), through a *present* (how it is linked to other practices, institutions, and social conditions). An Islamic discursive tradition is simply a tradition of Muslim discourse that addresses itself to conceptions of the Islamic past and future, with reference to a particular Islamic practice in the present.

Asad stresses that “even where traditional practices appear to the anthropologist to be imitative of what has gone before, it will be the practitioners’ conception of what is *apt performance*, and how the past is related to present practices, that will be crucial for tradition, not the apparent repetition of an old form.”³⁶

Asad’s “discursive tradition” has been widely used by anthropologists of Islam and in other disciplines, too often mechanically, to make sense of the relationship between past and present, and more specifically between transmitted teachings and their instantiation in the here and now of ethnography informed by contemporary

settings, notably “modern” forms, techniques, artifacts, and institutions. Yet the question that should be raised is whether Asad’s conceptualization of the relationship between past and present in Islamic discourses captures the shifting representation of the past and present and what it entails for both Islamic knowledges and practices. In *The Idea of an Anthropology of Islam*, it is the past that authorizes the practices of the present, since it is not, for Asad, the reality of continuity and identity of those practices in itself (the fact that “contemporary ideas and social arrangements are really ancient when they are not” or “that new ones have been introduced when actually they have not”) that matters, but the relationship to the past: “The important point about tradition is simply that all instituted practices are oriented to a conception of the past.”³⁷ Moreover, for Asad, on this matter, “there is no essential difference between ‘classical’ and ‘modern’ Islam.”

However, as shown above, an important shift took place at the end of the nineteenth century and the beginning of the twentieth century regarding the constitution of the “present” (associated with the “real”) as a source of authority in the production of Islamic legal knowledge, concomitantly with the reenactment of the authority of the past. This is actually a significant difference between classical and modern Islam, as present practices occurring in a space overlapping with the jurisprudential category of social interactions (*mu‘āmalāt*) are now grasped and assessed holistically and representationally as part of a broader problem raising questions about the authority, language, and categories of jurisprudential knowledge. The present is not only encountered through individual cases and events (*waqā’i‘*, *nawāzil*) to be assessed by jurisprudential knowledge and the formulation of fatwas, as was the case in classical Islam. The present has now an autonomy and a force of its own, mirroring the claimed autonomy of the social and attached to new forms of knowledge, and requiring a conceptualization with both old and new categories of jurisprudence (*fiqh*) and the sources of jurisprudence (*uṣūl al-fiqh*), but also of other Islamic knowledges, notably *kalām* (theology) and philosophy. The past is still authoritative, but its epistemic authority is now shared with the present.

PART FOUR

Episteme

Kalām and the Islamic Episteme

KNOWLEDGES AND THE ANTHROPOLOGY OF ISLAM

The anthropological study of shari‘a and law explored in this book entails a number of conceptual questions related to the anthropology of religion and Islam. Rather than starting from searching for and “finding” the religious (as Clifford Geertz put it),¹ or from the duality and intertwinement between religion and the secular, I am interested in studying Islam as knowledge(s) (*‘ilm*), and their relation to selves and ethics. This means, on the one hand, giving due attention to epistemic assumptions, objects, and modes of knowledge and, on the other hand, studying their relationship to practices. This approach has conceptual and methodological implications as it asks whether the anthropology of Islam should have practices as its primary object.

The question of (embodied) practices is central to Talal Asad’s conceptualization of the anthropology of Islam. In his influential piece on the subject, Asad revisits briefly the dominant analytical frameworks of the 1970s and 1980s and stresses the limits of Gellner’s totalizing construction presenting Islam as a “reversed Christianity” and as “a self-contained collective agent,” correlating “types of Islam” with “types of social structures.” He criticizes Gellner and Geertz, for whom the Muslims’ voice is totally absent as they “do not speak, they do not think, they *behave*,” or they merely offer “readable gestures.”² By contrast, Asad (re)introduces Islamic discourses in relation to the practices they authorize.

For Asad, the anthropology of Islam’s primary object is not the interpretation of religious symbols and styles (as it would be for Geertz) nor the search for holistic types associating social structures, religious beliefs, and political behavior (as for

Gellner). Instead, it is the study of “instituted practice” taught by an authoritative figure (“a ‘*alim*, a *khatib*, a Sufi sheikh or an untutored parent”) ensuring that the practice is performed correctly, or conforms to “the correct model.” The study of Islam as “a discursive tradition” in relation to its foundational texts doesn’t mean that tradition is homogeneous, but includes the analysis of “argument and conflict over the form and significance of practices” understood not as “a formal debate” or “polemic” but as “a way to win someone over for the performance” of a specific practice. The anthropologist, through the study of those practices, is actually interested in the “relationship of power to truth” in specific social and historical conditions.

Asad’s conceptualization of Islam was a pathbreaking methodological shift that opened up new fields of research. These positioned practices in relation to the formation of moral selves as the main field of inquiry, notably embodied practices and embodiment. However, we could ask if the focus on practices as a methodological choice misses important aspects of what the anthropology of Islam should cover if indeed it starts with what “Muslims do” (and one could add, *what Muslims know*, or more accurately, *what Muslims think is important to know*), notably questions about the status of non-practices raised from within Islam. While I concur with Asad about the need to stress the significance of practices in relation to “social and historical conditions” in the anthropological study of Islam, it is equally important to study Islamic knowledges and differentiate between those knowledges according to their object, that is, between knowledges *of* practices and other knowledges whose primary object is *not* practices. The anthropology of Islam should also study the extent to which the constitution and production of knowledges enable or exclude practices, but also enable certain (types of) practices rather than others.

The discipline of *kalām* is relevant here as it deals with beliefs, and particularly how one should believe in God and what this suggests about how one grasps the world. Starting in the second century of Islam, this knowledge was central in defining who a Muslim was. The scope of disagreement between scholars of *kalām* assumed the primacy of belief in God and in the prophecy, and the need to explore the forms and essence of what was to be believed in (God), including the prophecy, the world, and the human. These discussions made it possible to differentiate between distinct Muslim affiliations, and between Muslims and non-Muslims. In contemporary Islam, *kalām* is interested, alongside other knowledges (notably philosophy), in revisiting the status of revelation and beliefs in relation to current epistemic conditions, with new themes and new concepts such as liberal rights and freedoms.

Hence, while Asad stresses the importance of debate and argument in the Islamic tradition, one should add that there is a major difference between *kalām* understood as the knowledge of beliefs (in addition to new themes, debates and perspective informing contemporary *kalām* discussed below) and jurisprudence

(*fiqh*) comprehended as the knowledge of prescribed deeds. Debate and disagreement between scholars of *kalām* is not about the “correct practices,” but about what the Muslim should believe in.

More specifically, for classical and contemporary Islamic scholars, *fiqh* is defined as the knowledge of rules calling for action—that is, “practical rules” (*aḥkām ‘amaliyya*), the rule being God’s speech dealing with the worshippers’ deeds (*af’āl al-‘ibād*), which include the limbs (*jawāriḥ*). In contrast, *kalām* is known as the knowledge of “belief” (*i’tiqād*) and more generally the “set of beliefs” (*‘aqīda*) with the provision that it refers to “belief to the exclusion of deeds” (*al-‘itiqād dūna al-‘amal*). While *fiqh* regulates the acts of worship—prayer (including ablutions, speech acts, movements of the body), fasting, almsgiving, pilgrimage—as well as social relations and transactions (marriage, commercial contracts, endowments), *kalām* takes as its primary object the knowledge of God and His attributes, the universe (substance, accident and the status of bodies), the human (the self, the intellect, the senses), and the prophecy and miracles.

Hence, there is no doubt that the anthropology of Islam cannot be restricted to practices and should also deal with non-practical modes of being in the world, notably beliefs and non-practical knowledges. However, the notion of practices may include knowledges and beliefs. In the *Idea of an Anthropology of Islam*, Asad alludes to the distinction between argument and practices, in which argument is important to study not as an end in itself but to the extent that it sheds light on the (correct) practices to be performed (“argument and conflict over the form and significance of practices”). In a subsequent text written following the 2011 Egyptian uprisings titled *Thinking About Tradition: Religion and Politics in Egypt Today*, Asad elaborates on the relation between discourse and practices enabled by tradition, and reiterates the centrality and primacy of embodiment and embodied practices in the study of discursivity.³

Yet the meaning of practices can be expanded to include knowledges, as proposed by Macintyre’s *After Virtue*, with which Asad is in dialogue. Reclaiming the Aristotelian ethical tradition, Macintyre stresses the centrality of practices in the exercise of virtues. Macintyre acknowledges that he uses the word “practice” in a specially defined way which does not completely agree with current ordinary usage.⁴ For him, the word encompasses activities enabling the internal realization of goods while reiterating and expanding the very conceptions of those goods,⁵ including knowledges⁶ and artistic creation (“arts, sciences, games, politics”) involved in “the creation and sustaining of human communities.” However, I will not rely on the expanded meaning of practice suggested by Macintyre, as the difference between practice and non-practice is important in studying the extent to which this very distinction informs the production and reception of Islamic forms of knowledge and their differentiated relationship to the deeds’ practicality and materiality.

It is clear now that the Asadian notion of discursive tradition revolves around material practices and does not theorize the status of *abstract* and *systematic knowledge*, its relation to practical knowledge and to the knowledge of practice, and what it enables (or precludes) in relation to practices. Islamic forms of knowledge have differentiated relations to practices that should be accounted for, as the questions of practice and embodiment (as well as beliefs, non-practical knowledges and disembodiment) as such are raised as problems, notably in relation to the inner self and the unseen.

Asad's discursive tradition entails the study of Shari'a, including its authoritativeness, as a set of practices exemplified in *al-amr bi-l-ma'rūf wa al-nahy 'an al-munkar* ("urging what is good and opposing what is reprehensible") rather than as knowledge. For Asad, "one might suggest that (allowable) habitual practice isn't merely a possible source for the *shari'a*, it is in a deep sense what the *shari'a* is—by which I mean that the authority of the *shari'a* resides not in (written) rules and commands but in embodied practices (including sound interpretation put into practice of what the sources say) in accordance with living tradition. The changing character of custom in different historical circumstances inevitably affects the way in which Qur'anic and prophetic authority are interpreted and argued over in the *shari'a* tradition."⁷

Does *shari'a* have an authority, distinct from its embodied authority (that Asad conceptualizes), internal to its ensemble of texts, and to the structure and discourse deployed in those texts that requires the study of *shari'a* as (*disembodied*) knowledge(s)? Focusing on Islamic jurisprudence (*fiqh*), Brinkley Messick's *Shari'a Scripts*, in dialogue with Asad's "discursive tradition," takes seriously constituted knowledges and the extent to which they inform practices. *Shari'a Scripts* shows that the relations between genres are as constitutive of *shari'a*'s authoritativeness as the texts' substantive content. Messick's anthropology is attentive to practices and their relation to jurisprudential theory, and to the theory of practices formulated by Islamic scholars about their own practices.

The notion of "textual habitus" relied on by Messick is at the nexus of knowledge and practice. In conversation with Mikhail Bakhtin's works on authoritative discourse, Messick reads texts as an anthropologist in a way reminiscent of MacIntyre's expanded definition of practice, which includes knowledge. Interested in composition, Messick develops two categories for the study of Islamic jurisprudence that structure his entire book: the library and the archive. The library refers to the foundational texts of Islam, along with doctrinal treatises, commentaries, and juridical manuals, while the archive includes the idiosyncrasies of judiciary records, notarial acts, and contract documents.

The circulation between the world of archive and the library exemplified in the use of fatwas is an instance of what I called *abstract* and *disembodied knowledge* as fatwas, initially prompted by questions and situations circumscribed in time and

space, inform the production of general and generalizable rules and become integral parts of jurisprudential books once they have been “stripped” of most original contextual information such as names, dates, and place.⁸

Yet Messick, as with most in the academic field, studies shari‘a as jurisprudence (*fiqh*) leaving other relevant disciplines outside the contemporary understanding of shari‘a. The distinction between library and archive proposed by Messick is certainly pertinent and productive in the study of jurisprudence, but it is not relevant when it comes to other shari‘a disciplines. As underlined throughout this book, I take the distinction between shari‘a and *fiqh* as central. This is not in order to stress, as it has been rightly said, the contrast between divine truth and the uncertainty of human knowledge.⁹ Rather, I want to not restrict shari‘a to *fiqh* and to include other shari‘a knowledges (including those like Sufism that are both textual and experiential, or *kalām*, dealing with beliefs) that participate in a shared epistemic regime incorporating material and embodied practices such as collective and individual recitation, reading, and writing.

Another contention with Messick’s approach (and, generally, academics working on shari‘a), is that his study of jurisprudence is confined to social interactions (*mu‘āmalāt*), leaving aside its most crucial part, that is, worship. As discussed extensively in chapter 6, I do not limit the study of jurisprudence to social interactions but rather start with the acts of worship as the most fundamental rules in the Islamic normative hierarchy, informing the ways that rules regulating social interactions are inhabited by shari‘a subjects.

Hence, an analytical distinction should be introduced here between the social and the epistemic authority of shari‘a. The study of shari‘a as an episteme that I am developing in this book does not preclude the study of shari‘a as practice, as the former is interested in the inner logic of constituted knowledges while the latter sheds light on the social conditions of its reception by the subjects in a given time-space. The two inquiries are inter-related not only through practical knowledges (like *fiqh*) prescribing bodily deeds and calling for embodiment, but also through prior abstract knowledges (*kalām*, *uṣūl al-fiqh*, grammar and the science of language) delineating the generative epistemic principles on the basis of which revealed speech can be ordered and grasped, and practical rules formulated and deemed true or false. Hence, shari‘a’s social authority cannot be effective without its epistemic authority being informed by the constitution of relevant knowledges over time.

KALĀM AS FOUNDATIONAL KNOWLEDGE

A central argument of this book is the importance of distinct knowledges in the anthropological study of shari‘a, and more generally Islam. This entails, as discussed above, the study not only of practical knowledges, and the knowledges of

practices but also the study of (abstract) knowledges whose object are *not* practices, mainly *kalām* (and its cognate disciplines, namely philosophy, and *uṣūl al-fiqh*).¹⁰ Starting with the question of God's existence and dealing with the nature of His intervention and manifestation in the world (including through revealed speech), *kalām* is a discipline that enables other shari'a knowledges, and sets the foundational epistemic premise for revealed speech to be received and deciphered. While those shari'a knowledges can be authoritative and enable practices without recourse to speculative reasoning regarding God's existence and the truth of revelation, they are, nevertheless, neither dealing with these questions as an object of inquiry, nor are they equipped to formulate answers. *Kalām* is a relevant shari'a knowledge when beliefs and creeds are explicit objects of disagreement among Muslims and between Muslims and non-Muslims, but also as a background knowledge for other shari'a knowledges already positing God's existence and the revelation without having to demonstrate their truth through speculative and dialectical reasoning.

As a *metaphysics*, classical *kalām* offers a conception of the world and what is happening in the world through temporal and spatial categories positing the distinction (and elaborating on the relations) between being and nothingness, the finite and the infinite, the transient and the eternal, motion and rest, fullness (of space) and void. *Kalām* knowledge relies on a language giving an account of the cosmos and the events occurring in the world perceived by humans that is not based on the self's experience but rather on the understanding that the preexisting external world, of which the self is part, is conceptualized usually starting from a bodily (*ajsām*) and atomistic (*jawāhir*) material composition¹¹ of all existents (including the self), allowing for variations and modes (accidents, *a'rāḍ*), and all sharing the same finitude, in contrast with God's infinitude, eternity and spacelessness.¹²

Hence, in *kalām*, the main epistemic distinction is not, as in modern representational knowledge, between the self and the world, but between on the one hand, the world, including the self and all natural phenomena, and on the other hand, God. While this sharp differentiation requires a distinct scholarly discourse on, and about, God and His attributes (rather than a discourse *of* God) as recalled by Ibn Mattawayh in his treatise on atoms and accidents (*al-kalām fīhi wa fī ṣifātihi yanfaridu 'an al-kalām fī ghayrihi min al-ma'lūmāt*), this specific knowledge about God is nevertheless formulated with the same language used to describe the world. Yet, this shared language is relied only to the extent that it enables dual oppositional categories (notably in relation to time, space, knowledge and power), contrasting God and His attributes with worldly existents.

These categories and syllogistic reasoning are exemplified in the famous first thesis of al-Ghazali's *Iqtisād fī al-I'tiqād* (also known as the *kalām* cosmological argument), deducing God's existence from what can be observed from the world's

finite temporality, entailing a beginning in time and a cause for this beginning as the world belongs to the genus of finite things whose finitude presupposes a cause: "Whatever begins to exist in time has a cause. The world began to exist in time; therefore the world has a cause" (*kullu ḥadīth fa-li-ḥudūthihi sabab, wa al- 'ālam [ḥadīth] fa-yulzamu minhu anna lahu sabab*).¹³ The world, equated by al-Ghazali with "all existents" (*mawjūd*) except God, includes all bodies (*ajsām*) and their accidents (*a' rāḍ*). While the bodies (composed of atoms) and their accidents can be attested by observation (*mushāhada*), the existence of God can only be demonstrated by evidential reasoning (*yudraku bi-l-dalīl*) and not by sense-perception (*ḥiss*) because God is neither a body, nor an atom occupying space, nor an accident, but an existent thanks to Whom the world exists.¹⁴

From this perspective, *kalām* is not a hermeneutics entailing the exegesis of revealed speech as in the discipline of Qur'anic exegesis (*tafsīr*) or through the collection of the Prophet Muhammad's sayings (hadith). Neither is *kalām* interested in exploring the linguistic rules commanding the relationship between revealed speech and deeds as in the sources of jurisprudence (*uṣūl al-fiqh*). Rather, *kalām* is a dialectical discipline refuting and positing beliefs and creed through (demonstrative) reasoning. While *kalām* is not a hermeneutical knowledge, it is nevertheless about decipherment of the world through dialectical and demonstrative reasoning rather than an understanding of the text through the text, keeping in mind that the conclusions and final positions are deemed to be in harmony with the revelation's teachings or offering a conception that would reconcile an apparent contradiction with enunciations of revealed speech, especially that dealing with God's attributes.

Unlike the disciplines of Sufism and *akhlāq* (ethics), *kalām* does not take as its primary object the self, but deals primarily with God's existence, His attributes, the prophecy, and the world as phenomenally known by humans. Yet *kalām* treatises touch on the nature of the self (as body and soul), and address the question of divine justice and humans' ability to act. The ways in which God is conceptually grasped has consequences for how faith is lived by selves. As a physics, *kalām* provides an understanding of the natural world informing the self's conception of, and relationship to, the cosmos. Through *kalām*, the self can acquire a reflective knowledge of the perceived phenomena and beings constitutive of the world she lives in. While jurisprudence assumes an acting self whose deeds are guided by given prescriptions and proscriptions, and while Sufism involves an inner self shaped by spiritual practices, *kalām* requires a speculative self whose relationship to God (belief and faith) and to the world is mediated by intellection. *Kalām* inscribes the self in an intellectual and social world where multiple and divergent beliefs about God and the world prevail, and requires demonstrative and dialectical reasoning, potentially suspending one's own beliefs to start from the foundational premises about existence (*wujūd*) and nothingness (*'adam*).

KALĀM AND THE UNSEEN

The unseen (and its relationship to the seen) that is the condition of possibility of the revelation and shari‘a knowledges, including jurisprudence’s materiality, is the central object of *kalām*. More specifically, *kalām* deals with the unseen *par excellence*, that is, God and the extent to which He, and His attributes, are knowable and graspable in the world, including an understanding about how the world is constituted, and about relationships of causality. If *kalām* is literally “speech,” it can be understood as a discourse about the natural and the supernatural, that is, a *metaphysics* exploring how God’s intervention in the world can be grasped through a certain understanding of the natural world and of beings in their relationship to time and space. While a speculative discipline, *kalām* nevertheless has had important implications not only in relation to the question of post-caliphal power (and related conflicts and crisis), but more fundamentally, in relation to distinct beliefs and communal affiliations, and to making sense of the agency of the unseen.

When describing the intellectual operations and forms of reasoning by which their knowledge is produced, *kalām* scholars (philosophers and jurists as well) would summarize it as a way “to relate the unseen to the seen” (*qiyās al-ghā’ib ‘alā al-shāhid*), by which what is invisible and unknown becomes known from what can be seen through analogies and deductions, enabling humans to know God through their observation and knowledge of the world. This aphorism is also widely used in jurisprudence in reference to the scholar practicing *ijtihād*; notably, it often is used for those who, through analogical reasoning (*qiyās*), relate revealed speech to new factual occurrences (deeds, events, situations) absent from the authoritative textual sources, and which require the formulation of new rules. In relation to the use of logic in his metaphysics and knowledge of the divine (*ilāhiyyāt*), Ibn Sina refers to the “ways in which one reaches the unknown through the known” (*kayfiyat yutawassal min ma’lūmin ilā majhūl*).¹⁵

When raising the question of whether God can be seen, *kalām* scholars grapple with the uniqueness and radical separation of God from other existents, and whether God’s essence can be reducible to human epistemic and sensible categories. While the Mu‘tazila¹⁶ denied the possibility of seeing God because that would entail anthropomorphism and corporealism (*tajsīm*),¹⁷ and would contradict His essence, al-Ghazali, representing the prevalent Ash‘ariyya position, maintained that seeing God is not a priori impossible but requires the right understanding of what is meant by “vision” (*ru’ya*). What matters for al-Ghazali is not whether God is actually seen (*mar’iyyan bi-l-fi’l*) but whether it is a potentiality (*bi-l-quwwa*) for Him to be seen by humans that can be proved by reasoning alone, and attested by the revelation (notably in Qur’anic verses mentioning Moses). For al-Ghazali, God can be seen by the mere fact of His existence, which coincides with His essence, which can be known and seen by the mere fact of existing. If something

impedes the possibility of seeing Him, it has nothing to do with His essence but is external to the latter.¹⁸

Asserting that God can be potentially seen means next asking whether this possibility violates His essence, and alters any of His attributes. Al-Ghazali replies that for God and other existents to have common qualities (in this case, being seen) is admissible to the extent that it does not entail associating the Creator with temporal finitude (and more precisely occurrence in time, *ḥudūth*) attached to the other existents.¹⁹ In addition, defining what is meant by “seeing” God requires an iterative process by which the meaning of seeing is not a given, but is adjusted to God’s essence. All properties of seeing that do not fit what is deemed impossible in relation to divine essence are removed until the definition becomes compatible with what is known about His essence. This procedure leads, for al-Ghazali, to an allegorical understanding of vision (*ru’ya*) and the act of seeing (*ra’ā*) rather than sticking to their non-mediated meaning, and informs the understanding of its occurrence in the revelation.

Hence, “seeing” should not be equated with what is usually involved by the senses and does not entail what is perceived by someone when looking at bodies and colors (*lā tusāwī al-ḥāla allati yudrikuhā al-rā’i ‘inda al-naẓar ilā al-ajsām wa al-alwān*). When related to God, seeing is not necessarily associated with the eye but means, for al-Ghazali, in a language echoing Sufism, the ability to see with the heart. It is a form of perfect perception and an unveiling informing the imaginative faculty (*innahā naw’ idrāk huwwa kamāl wa mazīd kashf bi-l-iḍāfa ilā al-takhayyul*).²⁰ Yet this unveiling is not possible in the sensible world given that the body and worldly habits operate like a veil impeding the ability to see. It is only when the souls and hearts are purified (*zakiyat al-qulūb*) from the bodily and the worldly that seeing God is possible, that is, when encountering God (*liqā’ Allah ta’ālā*).²¹

From this perspective, there is no contradiction between, on the one hand, the claim that God’s existence cannot be proved by sense-perception but only by evidential reasoning displayed in the discipline of *kalām* (as formulated by al-Ghazali in the introduction to *al-Iqtīṣād fī al-I’tiqād*), and, on the other hand, the thesis that God can potentially be seen by humans. While reasoning and its findings are potentially shared by all those, regardless of their faith, able to use their reason, seeing God is a path to perfection requiring the purification and disembodiment of souls more likely to happen in the afterlife than in the worldly life. Therefore, that God can be potentially seen is not mentioned by *kalām* scholars, whether they support (the Ash‘ariyya) or reject (mainly the Mu‘tazila) this thesis, as a relevant evidence for God’s existence. Rather, the question of whether God can be seen comes after the question of God’s existence, in the part devoted to His essence, and, in al-Ghazali’s *al-Iqtīṣād fī al-I’tiqād*, after addressing God’s eternity and what God is not and cannot be associated with (a body, a substance, an accident, a

location), and often coupled with the issue of anthropomorphism and corporealism. Consequently, even when accepted as a conclusion, the thesis of humans' (potential) vision of God does not exhaust His association with the unseen (*al-ghayb*) and the broader questions of the nature of God's intervention in the world, causality and human agency.

KALĀM AND DIALECTICAL KNOWLEDGE

For classical scholars like al-Ghazali, the study of *kalām* is important because it raises existential questions that could be answered by relying on dialectical reason. What the revelation (as a reported speech) says about what happens to the self after her death is "concealed from human eyes" and is a source of anxiety that is actually an invitation to investigate (*al-baḥṭh*) and to reflect (*iftikār*) on whether what is reported by the prophetic speech is "impossible in itself" (*maḥālun fī nafsihi*) or an "unquestionable truth." Given that everlasting happiness (or suffering) is at stake, investing intellectual effort into this knowledge whose object is "to demonstrate the truth of God's existence, His attributes, His actions and the truth of messengers" is required by both reason and prudence.²²

In contradiction to other shari'a disciplines (jurisprudence, sources of jurisprudence, Sufism) and other knowledges attached to them (exegesis of the Qur'an [*tafsīr*], hadith), *kalām* is the distinctive discipline of disputation and argument requiring each scholar to situate himself vis a vis sectarian and intellectual adversaries through a dialectical approach introducing the latter's views, refuting them and formulating the position of the scholar's community of belief and creed.

A central feature of classical *kalām* was that the discipline was a shared space of disputation that did not require prior belief in revealed truth or in a given creed, as the purpose of this knowledge was precisely to demonstrate the truth of one's beliefs rather than taking them for granted. This is the reason why *kalām* entails speculative and demonstrative reasoning and forms of causality rather than transmitted knowledges or revealed speech itself that would include Qur'anic exegesis (*tafsīr*), the hadith, jurisprudence (*fiqh*), or the sources of jurisprudence (*uṣūl al-fiqh*). As creedal adversaries are the main interlocutors in the discipline, a *kalām* scholar is potentially in a position to convince his opponent to renounce his views and adopt an alternative one. This means that a *kalām* scholar has to develop the most efficient dialectical and argumentative skills in refuting his opponents' views, typically through internal criticism showing that the adversary's positions are inconsistent and contradictory with his own creedal and intellectual frame of reference.

As a result, modes of reasoning deployed in *kalām* can be abstracted and grasped autonomously from their subject-matter. A number of classical *kalām* treatises include introductory chapters on the science of logic²³ and modes of reasoning. Introductions of *kalām* treatises on syllogistic reasoning are an indication

that abstract forms of evidential and demonstrative reasoning were the shared epistemic language for discussion, debate, refutation, and formulation of truth between people with different beliefs and divergent views on God, the universe, human agency, the prophecy, or the post-prophetic exercise of power. Al-Ghazali's *al-Iqtisād fī al-ʿItiqād* includes an introduction on methods of evidential reasoning (*manāhiḡ al-adilla*) identifying the key principles shared by all those engaging in disputation and that intellectual adversaries themselves would recognize as authoritative sources of knowledge, relying on sense-perception (*ḡissiyyāt*), syllogistic reasoning deployed by pure reason (*al-ʿaql al-maḡz*), widely transmitted reports (*al-mutawātir*), transmitted knowledge (when recognized and shared by the adversary), or a truth statement taken from the adversary's beliefs and from what the latter takes as self-evident (*muʿtaqadāt al-khaṣm wa musallamātihi*).

Similarly, Fakhr Din al-Razi's *Maʿālim Uṣūl al-Dīn* also starts with a short introduction on reflection (*nazar*) and the distinction between conception (*taṣawwur*) of an object (which does not involve neither affirmation nor negation), and assent (*taṣḡiq*) requiring a truth judgment. Reflection and thought (*fikr*) consists in organizing (*tartib*) premises leading to either certain knowledge (*ilm*) or probable knowledge (*zan*).²⁴ Reflection entails syllogistic reasoning as it comprehends a (third) truth statement—Razi illustrates this with the statement “this piece of wood is burned”—formulated on the basis of two premises (this piece of wood has been touched by the flames, wood is inflammable). Reaching a truth statement about a subject-matter is a deductive operation by which what is sought and unknown (*maṡlūb maḡhūl*) is known through two prior truth statements (*maʿlūmayn mutaḡaddimayn*) whose absolute certainty or mere probability will determine the conclusion's own degree of certainty.²⁵

ON THE SOCIO-POLITICAL USE OF KALĀM

The set of issues informing the objects of knowledge of *kalām* were initially associated with theological-political and theological-jurisprudential questions raised in early Islam. The first major internal conflict and divisions within the Muslim community associated with the succession of the Prophet Muhammad (notably following the murder of Othman, the third caliph, and the war between Ali, the fourth caliph, and Muʿawiya, then governor of Syria), prompted debates about whether rebellion against a sinful ruler was a duty, and consequently, about what are the necessary qualifications of the caliphal ruler, and more generally, the theological-jurisprudential implications of sin for the status of Muslim, and belonging to or exclusion from the community. These questions, informing original and subsequent divisions and affiliations within the Muslim community, became increasingly addressed in a sophisticated manner in the discipline of *kalām*. With those differences constituting the starting point of *kalām*, and unlike the disciplines of

jurisprudence or Sufism, knowledge was displayed dialectically, involving the exposition of one's intellectual adversaries' positions on the key matters in order to refute them.

Major Islamic scholars versed in jurisprudence, including those criticizing the discipline or one of its branches, wrote treatises on *kalām* or would address common themes in their writings on creed (*'aqīda*). Al-Ghazali makes an important distinction between, on the one hand, the epistemic prevalence and priority of *kalām* over all other disciplines (described in his *Mustasfā* as the mother of all knowledges), and, on the other hand, its social use.²⁶ For al-Ghazali, a skilled scholar would ideally be trained in both jurisprudence and *kalām*, but if this is not possible, priority should be given to jurisprudence, as the latter is a much more needed discipline for the everyday individual and collective life. Ideally, each local community would have a scholar trained in *kalām* to refute heresies, but in practice the need for demonstrative and dialectical reasoning (*al-burhān wa al-jadal*) in relation to beliefs remains a rare occurrence.

Hence, for al-Ghazali, the social use of *kalām*, like medicine, should be carefully dosed and taught to the population distributed in four categories on the basis of their faith and intellectual skills. Addressing peaceful believers devoting their time to worship or crafts with *kalām* speech would entail taking unnecessary risks of destabilizing their beliefs. In addition, the revelation requires only belief and makes no difference between believers on the basis of how belief has been reached, whether through imitative faith (*īmān taqlīdī*) or through demonstrative certainty (*yaqīn burhānī*).²⁷ *Kalām* is also useless for a second group comprising stubborn unbelievers and inflexible blameful innovators unable to make a sound use of reason, and for whom argument and dialectical reasoning can only add to their obstinate rejection of truth. By contrast, *kalām* is potentially relevant for a third category of the population that includes believers whose beliefs have been shaped by imitation and audited transmission (*samʿ*) but who are subject to doubts. In this case, authoritative teachings and quotes from the Qurʾan and the sayings of the Prophet Muhammad will be used, and for the most intelligent requesting more sophisticated responses, dialectical and evidential reasoning can be used. *Kalām* should also be used gently for a fourth group of people living in error (*tāʾifa min ahl al-ḍalāl*) subject to doubts, and whose indications of intellect show that they are amenable to being convinced of changing their false beliefs and recognizing the truth.

KALĀM AND JURISPRUDENCE

Kalām overlaps with jurisprudence (*fiqh*), and jurisprudential themes were present in many authoritative *kalām* works, starting with the question of whether engaging in *kalām* is a (legal) obligation, particularly in response to detractors rejecting

the discipline. That *kalām* could be considered the foundational discipline of all shari‘a knowledges does not shield it from being assessed from the perspective of jurisprudence. Part of the response was in the way *kalām* scholars defined the object of their discipline, the same way scholars dealing with jurisprudence and its sources (*uṣūl*) would do. That *kalām* addresses, through beliefs, existential questions related to the truthfulness of the afterlife informs its jurisprudential status, without exhausting it. In *al-Iqtiṣād fī al-I‘tiqād*, *kalām*, like jurisprudence, is qualified as a “collective obligation” (*farḍ kifāya*) rather than an individual one (*farḍ ‘ayn*), because the whole community is tasked to have scholars versed in that knowledge so that the obligation can be fulfilled.²⁸ Yet it becomes an individual obligation for believers as well, should they become subject to doubts in matters of faith. Those doubts should be addressed through the discipline of *kalām* leading to truth on the basis of demonstration (*burhān*).

Although its lawfulness is assessed by jurisprudence, *kalām* is nevertheless foundational of jurisprudence in many respects. Proving that God exists is an important demonstration, but it does not suffice to establish revealed speech’s truthfulness. One has to assess whether revealed speech is God’s speech, and if so, how it relates to God’s essence, that is, in relation to temporality and infinitude. One has also to assess whether one should believe in revealed speech, and if so, how one should believe in it—that is, how one should understand revealed speech’s utterances, and what the role of reason should be in orienting the understanding of those utterances. Hence, assessing the truthfulness of revealed speech and modalities of belief and understanding of revealed speech has important consequences for jurisprudence, as revealed speech is the foundational source out of which jurisprudential rules can be “extracted” either directly, or through analogical reasoning (*qiyās*) in the practice of *ijtihād*. Those questions were usually addressed right after the parts devoted to God’s essence and attributes, in the chapters dealing with the truthfulness of prophecies, including Muhammadan prophecy, and the veracity of revealed speech.

In al-Ghazali’s *al-Iqtiṣād fī al-I‘tiqād*, the chapter “demonstrating the obligation of belief in matters conveyed by the revelation and attested by reason” (*fī bayān wujūb al-taṣdīq bi-umūr warada bihā al-shar‘ wa qaḍā bi-jawāzihā al-‘aql*) stresses that when a meaning of a passage of revealed speech is not validated by reason, it requires an allegorical interpretation, as it is not conceivable that the revelation contradicts what is rational (*amma mā qaḍiya al-‘aql bi-istiḥālatihi fa-yajibu fihi ta’wīl mā warida al-sam‘ bihi, wa lā yutasawwar an yashtamila al-sam‘ ‘alā qāṭi’ mukhālif lil-ma’qūl*).²⁹ This general principle of engagement with revealed speech enunciated by al-Ghazali is valid not only for matters related to belief and creed in the discipline of *kalām*, but also informs the ways in which jurists should read and understand the foundational texts, and how legal rules can be formulated in the sources of jurisprudence (*uṣūl al-fiqh*).

Kalām works can also be theological and metaphysical responses to jurisprudential questions. Al-Ghazali's *Tahāfut al-Tahāfut* does not only refute the philosophers' views on *kalām* questions related to God's essence, His attributes, and the world, but also asks whether their positions warrant the qualification of unbelief (*kufr*). In the conclusion, al-Ghazali writes that the claims that the world is eternal, that God does not know the particulars (*juz'īyyāt*), and that bodies will not be resurrected are three theses attached to the philosophers (among the twenty theses discussed in *al-Tahāfut*) that are not shared by other Muslim groups and that can justify the charge of unbelief. Ibn Rushd's *Faṣl al-Maqāl* is both a metaphysical treatise and a jurisprudential opinion (fatwa) assessing the lawfulness of speculative reason and philosophy informed by the five legal categories qualifying an act in Islamic jurisprudence (permissible, forbidden, prescribed, recommended, obligatory).

The most notable use of jurisprudential reasoning and themes in *kalām* works are the last chapters dealing with the imamate. Yet, as acknowledged by *kalām* scholars themselves, this part is distinct from the metaphysical and theological questions that constitute the core of the discipline as it addresses the regulation of collective life. If, following al-Ghazali or al-Juwayni, the imamate is part of "jurisprudential matters" (*al-fiqhiyyāt*), it nevertheless overlaps with questions of beliefs in relation to the status of the imam out of which major confessional differences and affiliations have perpetuated, notably the distinction between Sunni and Shi'a. More specifically, the section would address whether the imamate is an obligation (out of reason or revelation), the procedure for the designation of the imam, the qualifications (probity, knowledge, abilities, filiation) necessary to hold the position, and the obligations and responsibilities of the imam for his rule to be considered legally valid.

KALĀM AND PHILOSOPHY

While Islamic philosophy has often been set in opposition to *kalām*, Islamic philosophers actually share with *kalām* scholars the fundamental premise that a discourse on, and a knowledge of, God requires a knowledge of the natural world in its own right which presupposes itself an understanding of the extent of God's intervention in the cosmos to have a full account of natural phenomena.³⁰ The philosophers shared also with *kalām* scholars an interest in a self-reflective understanding of the instrument of thought, that is, the discursive rules for a statement, or series of statements to be true, as captured by logic. In a way similar to key *kalām* works, Ibn Sina's magnum opus *Kitāb al-Shifā'* offers both a physics (*al-ṭabī'īyyāt*), a metaphysics (or literally divinity, *ilāhiyyāt*), and a logic (*mantiq*) which form, in addition, to mathematics (*al-riyāḍiyyāt*), the four parts of the book.

In Ibn Sina's unifying philosophical project seeking systematic connections between all forms of knowledges, the knowledge of God (*ilāhiyyāt*) takes as its object what is substantively and conceptually separate from the matter (*al-umūr al-mufarriqa lil-mādda*), and inquiries into the first causes of natural and mathematical existents (*al-asbāb al-uwlā lil-ṭabī'ī wa al-ta'limī*), and the cause of all causes (*musabbib al-asbāb*) and the principle of all principles (*mabda' al-mabādi*).³¹ Hence, the study of "first philosophy," entailing the study of the first cause, its attributes and actions, is also tasked with providing the epistemic foundation for all sciences and validating (*taṣḥīḥ*) them.³² With notable differences, in both *kalām* and philosophy, the knowledge of God is not separable from the knowledge of how beings and things relate to each other. In a way very similar to *kalām*, the knowledge of God, in Islamic philosophy, requires a knowledge of the world, and an understanding of the nature of the relationship of God to the world. In both disciplines, the question of causality (as we will see below in relation to *qiyās*) is important when giving (divergent) accounts of the ways in which God intervenes in the world, notably in relation to human agency.

Kalām scholars also rely on forms of reasoning and epistemic categories usually associated with the discipline of philosophy. In *Tahāfut al-Falāsifa*'s fourth introduction, al-Ghazali's central methodological criticism of the Islamic philosophers (mainly Ibn Sina and al-Farabi) is their internal contradictions and their inability to deploy sound reasoning on the basis of their own authoritative rules. While al-Ghazali dismisses the propaedeutic use of mathematics and geometry by the philosophers in the knowledge of God (*ilāhiyyāt*) as irrelevant, he fully acknowledges the importance of logic (*manṭiq*) in the inquiry about the divine but stresses that those very philosophers do not have a monopoly over the science of logic, which is rather a knowledge used in both *kalām* and philosophy. For al-Ghazali, the science of logic is a means to an end rather than being an end in itself, as it deals with the instrument of thought reflecting on the intelligibles (*wa amma al-manṭiqiyyāt fa-hiyya naẓar fī ālat al-fikr fī al-ma'qūlāt*). However, a successful criticism requires a work of translation across disciplines, requiring scholars "to leave aside the terms of *kalām* and *uṣūl al-fiqh*, and to use instead the expressions of the logicians." Al-Ghazali is interested here in showing that the philosophers have been unable to fulfill their own principles of Aristotelian syllogistic reasoning (*qiyās*) formulated in *Isagoge* and *The Categories*, as the application of such rules to the knowledge of God (*ilm ilāhī*) reveals major inconsistencies.

The works of al-Farabi, al-Ghazali, Fakhr Din al-Razi, Ibn Sina, Ibn Rushd, or Ibn Khaldun attest to the shared episteme and categories relied on in *kalām*, philosophy, and the sources of jurisprudence (*uṣūl al-fiqh*). The use of shared categories across *kalām*, philosophy, and jurisprudence is notably illustrated by the circulation of the notion of *qiyās*³³ which, in jurisprudence, means analogical reasoning, and, in *kalām* and philosophy, refers to syllogistic reasoning. While

distinct intellectual operations, analogy and syllogism are nevertheless both relied on to determine relations between different things that may share a common characteristic leading to a conclusion while reenacting a general principle (the major premise in the syllogism), or potentially extending the scope of a rule from its initial occurrence on the basis of similarity (legal analogy).

As the instrument of thought setting relations between things, *qiyās* was particularly suited to determine the nature of the relationship between God and the world. Yet, in this case *qiyās* should also be understood negatively, as it was the same intellectual tool relied on to enunciate the absolute difference between God and the world, and at the same time formulate, through the natural sciences, relations and general rules of (material) identity between humans and the world's components instantiated in atoms (or, alternatively, in bodies). If analogy can potentially relate everything to revealed speech in jurisprudence, it is relevant in the knowledge of God only to the extent that it can attest to the absolute non-similarity between Him and the rest. While *qiyās* entails comparables and its verbal root, *qāsa*, involves measurement of something to which it is measured, God is that which, or rather Who, is incommensurable.

Ibn Rushd, when responding to the question of the lawfulness of philosophy and the science of logic, stresses that the revelation, exemplified in the Qur'an, *Al-Ḥashr*, 2, *fā-a 'tabirū yā ūlī al-abṣār* ("So reflect, O those who are perceptive"), enjoins the use of both autonomous reasoning (*al-qiyās al-'aqlī*) deployed in philosophy, and reasoning guided by the revelation itself (*al-qiyās al-shar'ī*), as both philosophy and the revelation enable humans to reflect upon the existents (*mawjūdāt*). While Ibn Rushd's *qiyās* is a general term referring to reasoning and reflection (*i 'tibār*) understood as a passage (*'ubūr*) from ignorance to knowledge, entailing "extraction of the unknown from the known" (*istinbāṭ al-majhūl min al-ma'lūm*), it actually encompasses multiple forms of *qiyās*, notably demonstrative (*burhānī*), dialectical (*jadalī*), rhetorical (*khiṭābī*) and sophistical (*mughālīṭī*) that should be known and differentiated from each other by the believer taking seriously the task of reflecting upon the existents as only demonstrative reasoning reaches certainty (*yaqīn*).³⁴ In this, Ibn Rushd follows al-Farabi's typology in his *Enumeration of the Sciences* distinguishing between the four forms of *qiyās* (in addition to the poetical, not mentioned by Ibn Rushd) according to their degree of truth and certainty and their effects on the audience.³⁵

In Ibn Rushd's *Faṣl al-Maqāl*, jurisprudence is a knowledge in which *qiyās* (in this case *fiqhī*, "jurisprudential") is relied on as an obligation for the scholar-jurist when dealing with God's speech and relating it to deeds, and to which a parallel can be drawn with philosophy as the latter deals not with God's speech but with God Himself, which is a higher form of knowledge. In philosophy, the demonstrative reasoning (*qiyās burhānī*) used to acquire the knowledge of the world is a way to know God, since the more creatures know about what has been created, the

more they know about their Creator. The distinction between multiple uses (and misuses) of *qiyās* across disciplines and according to their degree of truth also informs the classification of the Islamic community according to its commitment to a given form of reasoning. Higher forms of shari'a knowledge enabled by interpretation (*ta'wīl*) associated with allegorical signification (*dalāla majāziyya*) and obtained through demonstrative reasoning (*qiyās burhānī*) are only accessible to "the people of certain interpretation (*ahl al-ta'wīl al-yaqīnī*)," also called "those mastering the art of demonstration" (*al-burhāniyyūn*). This group is distinguished from both the dialecticians (*al-jadaliyyun*), meaning the *kalām* scholars practicing "dialectical interpretation (*al-ta'wīl al-jadālī*)" associated with probable thought (*ẓannī*), and from the majority, for whom interpretation is not adequate but requires sticking to the apparent meaning of the revelation (*ẓāhir al-sharī'a*).

While *kalām* themes inform the work of Islamic philosophy, and while prominent *kalām* scholars would engage with the philosophers, the latter would, nevertheless, consider *kalām* inferior to philosophy. Al-Farabi defines *kalām* as a mere apologetic knowledge confined to the defense of the community's views (*naṣrat al-ārā'*) formulated by its founder, and the refutation of whoever diverges from it rather than a discipline able to enunciate the truth.³⁶ For Ibn Rushd, *kalām*, as a dialectical knowledge, can only produce probable thinking (*ẓannī*) rather than reaching demonstrative and certain truth. Yet, Ibn Rushd did engage with *kalām* scholars in *Faṣl al-Maqāl*, and his *al-Kashf 'an al-Adilla fī 'Aqā'id al-Milla* is a work of *kalām* dealing with its core themes and reenacting the discipline's dialectical language, refuting adversaries claiming divergent creeds.

In *al-Kashf 'an al-Adilla fī 'Aqā'id al-Milla*, Ibn Rushd addresses the wider Muslim community and reclaims the apparent meaning of beliefs and creed (*al-ẓāhir min al-'aqā'id*) understood as an obligation that the revelation enjoins the people (*al-jumhūr*) to follow.³⁷ *Al-Kashf 'an al-Adilla fī 'Aqā'id al-Milla* builds on *Faṣl al-Maqāl*, in which Ibn Rushd posits the distinction between on the one hand, shari'a's higher and inner truth (*bāṭin al-sharī'a*) that can be reached only through allegorical interpretation (*ta'wīl*) formulated by the scholars who master the art of demonstrative reasoning and, on the other hand, the apparent and immediate meaning of shari'a (*ẓāhir al-sharī'a*) taught to the people (*al-jumhūr*) to whom the inner truth should not be disclosed.

The disagreements on matters related to belief in God (and eliciting certainty) between the four competing groups (al-Ḥashwiyya, al-Bāṭiniyya, al-Mu'tazila, and al-Ash'ariyya)³⁸ that *al-Kashf* engages with, are, for Ibn Rushd, a major source of disorientation for believers. Ibn Rushd seeks to refute *kalām* scholars who misled the believers in claiming that their views on creed should be followed as an obligation, although those views were actually mere interpretations.³⁹ In other words, although the higher truth of the revelation can only be obtained by allegorical interpretation formulated through demonstrative reasoning, it is nevertheless not

this truth that should be disclosed when addressing the majority of the people in a polemical and dialectical discipline (*kalām*)⁴⁰ but rather what can be grasped by them, that is, the revelation's apparent and immediate meaning.

Among the groups involved in *kalām* disputes, Ibn Rushd refutes the Ḥashwiyya, who, by sticking to the knowledge transmitted by the revelation captured by its foundational texts, contravene what Ibn Rushd understands as the revelation's teachings regarding the use of reason as a mean to know God.⁴¹ While Ibn Rushd acknowledges that the Ash'ariyya (already recognized by Ibn Rushd as the dominant creedal school among the Sunni), start indeed from the premise that the knowledge of God should be pursued on the basis of reason, they have been unable to use the latter properly, in a way that would be conclusive of God's existence. More specifically, if some aspects of the atomism relied on by the Ash'ariyya are receivable (if understood as self-sufficient bodies), the idea of non-dividable atoms (*juz' lā yatajazza'*) does not hold⁴² and has been a subject of too many disagreements among *kalām* scholars themselves to be a source of certain knowledge. Similarly, the premise that all accidents are created in time, and their conception of time, space, and void in relation to the creation of the universe are flawed. Ibn Rushd rejects also the Ash'ariyya thesis of a world created out of contingency (the result of God's act alone) as it would contradict wisdom (*ḥikma*) equated with the knowledge of causes of things (*ma'rifat asbāb al-ashyā'*), while there would be no necessary causes for their creation, and creatures would be without any purpose.

Formulated on the basis of a comprehensive and deductive reading (*istiqrā'*) of the Qur'an, Ibn Rushd's alternative view regarding the proof of God's existence is twofold. First, existents, whether animal, vegetal, or mineral, have all been created for the care (*al-'ināya*) of human existence. The creation of the world is neither a contingency nor a coincidence, but an act of God's will that sets a concordance between human existence and the world. Second, the evidence of God's existence stems from creation itself (*dalīl al-ikhtirā'*) and life given to bodies. The ultimate wisdom for any existent is to know the cause for her being created, and the telos attached to her (*ma'rifat al-sabab alladhī min ajlihi khuliq*). If these two evidences can be easily grasped by the majority of people through sense-perception, the qualified scholars (in addition to what is immediately available to the senses), should go further through demonstrative cognition and the knowledge of natural phenomena. While the philosophers are able to know the natural world and creatures as a means to know God, it suffices that the people know that God's existence is attested.

CONTEMPORARY KALĀM AND THE NEW REAL

In the twentieth and twenty-first centuries, *kalām*, in conjunction and overlapping with philosophy, is a major space of debate and engagement with the revelation in the light of new questions about the status of old and new knowledges, their

(transformative) power over the world and more broadly the cosmos, and their ability to comprehend the (new) “real.” While classical *kalām* dealt with God’s existence, His essence, and His attributes, the composition of the physical world, the revelation’s truthfulness, and the imamate, contemporary *kalām* is primarily concerned with the status and meaning of the revelation (enabling shari‘a and its knowledges) in a world shaped by modern science and technology. It is also through this engagement with the revelation (and more specifically the Qur’an) that the question of Islamic jurisprudence’s authority and validity for the regulation of individual and collective life is addressed.

What I mean by “contemporary *kalām*” is not restricted to thinkers who explicitly reclaim the discipline (such as Muhammad Iqbal) and structure their work in terms mirroring classical *kalām* (for instance Muhammad Abduh, Hassan Hanafi, and Taha Abderrahman) but includes also intellectuals dealing extensively with the status of reason in Islam (such as Muhammad Abd al-Jabiri), and scholars interested in revisiting the exegesis of the Qur’an with new questions about modern science and individual freedoms (including Taha Mahmood Taha, Muhammad Shahroor, and Abdelkarim Soroush). The authors who do not affiliate themselves with the discipline are actually inheriting central questions of classical *kalām* comprehending the status of reason in relationship to revelation, the knowledge of the cosmos and existents, and human agency, and, therefore, are writing also *as kalām* scholars.

If the most controversial questions in classical *kalām* included the eternity (or createdness) of the world and the Qur’an, God’s essence and attributes (notably His knowledge of particulars), it is the authoritativeness of the revelation, subsumed under the category of “religion,” and jurisprudence’s relevance in the regulation of individual and collective life that are primarily discussed in contemporary debates. While lines of disputation in classical *kalām* were structured around distinct communal affiliations, all reclaiming a knowledge of God and the nature of His intervention in the world (including philosophy through the notion of causality and the First Cause), contemporary *kalām* (and more generally contemporary discourse about religion) is structured around those recognizing the revelation’s authority in socio-political life (and interested in showing how it remains authoritative and responsive to modern conditions of life), and those who do not acknowledge such authority.

Reality, knowledge, history, rationality, and freedom are the key themes addressed in contemporary *kalām*, and more generally contemporary thought in Muslim societies. The “real” is a new category relied on to describe a dual relationship between the individual subject and the world (the world of nature and the social world), by which the (newly created) subject has withdrawn from the world to know it, picture it, master it, and transform it. After the advent of modern science it is humanity and its “History” that are the main objects of knowledge, rather than God and the cosmos, as in classical *kalām*. By contrast, in classical Islamic metaphysical thought, the

divide was not between man and the world, but rather between God (the eternal and the infinite), and all other existents subject to finitude.

Among major thinkers of the contemporary Islamic world, the real is conceptualized and grasped through its materiality and visibility, by which the gap between Muslim countries and the West is perceived as a lack. When confronted to the new real, inherited Islamic knowledges seem powerless and unable to decipher the real, that is, the present lived by contemporary thinkers. With this inability to comprehend the real, inherited knowledges lose their epistemic authority and may no longer be considered proper knowledges, but become associated with the call for authenticity. Knowledge is now assessed and given the quality of knowledge when what it says about the real is measurable and quantifiable, and its effectiveness is evaluated on the basis of its ability to transform the real, that is, its power over things and how it translates into, and is concomitant with, a power over humanity.

It is this materiality and “concreteness” of contemporary life attached to modern science that Muhammad Iqbal’s *Reconstruction of Religious Thought* posits as an opportunity to (re)think Islamic thought under a new light. For Iqbal classical *kalām*, notably in its Mu’tazilite version, and Ibn Rushd’s philosophy, with their speculative thought leaving aside the concrete experience, have obscured the true message of the Qur’an. The concrete, here, is the natural world and the cosmos (“the world of plants, insects, and stars”) mentioned in the Qur’an and that can be apprehended by sense-perception. Iqbal argues that the speculative trend in Islamic thought sticking to the conceptual and the logical, and uninterested in the concrete, was actually inherited from Greek philosophy, mainly Plato, for whom sense-perception was not a reliable source of knowledge.

This duality between the material and the non-material overlaps with other dualities between the ideal and the real, and between the subject and the objective world, mentioned by Iqbal in *Reconstruction of Religious Thought*. While the modern’s world materiality may be a problem for a Christianity interested in the soul and its salvation through renunciation as it accentuates the divide between the spiritual and the material, it is, from an Islamic perspective, a renewed opportunity to shed light on the overcoming of the duality between (spiritual) subject and (material) object and how to (spiritually) embrace the world’s materiality: “Both (Christianity and Islam) demand the affirmation of the spiritual self in man, with this difference only: that Islam, recognizing the contact of the ideal with the real, says ‘yes’ to the world of matter and points the way to master it with a view to discovering a basis for a realistic regulation of life.”⁴³

Proper knowledge is the bridge between the subject and the object, between the ideal and the real, and is effective to the extent that it gives the subject a power over reality. Ancient cultures did not survive because they produced powerless knowledges from within, without being relevant to the visible external world: “This pro-

cedure gave them theory without power, and on mere theory no durable civilization can be based.”⁴⁴ Hence, for Iqbal, knowledge is about power over nature, which is needed to “master its forces.” And it is this relationship of mastery of nature that is fully recognized by the Qur’an “not in the interest of unrighteous desire for domination, but in the nobler interest of a free upward movement of spiritual life.”⁴⁵

However, Iqbal’s insistence on the importance of the external world and its concreteness that arises out of modern science and its transformative powers is also a way to shed light on the distinctiveness of religious knowledge and the truth it enables. If modern science offers a “mass of sectional views of reality”⁴⁶ juxtaposed to each other without a unifying view, it is religion that addresses “the whole of reality.” Causality entailing a mechanistic view of the world is of no value when dealing with the “ultimate nature of existence.” Science analyzes relationships of causality that remain external to us, but does not have anything to say about the end and purpose from “within” as in religion.

The difference between science and religion is better understood when shifting the perspective to the self and its constitutive duality. While the “efficient” and “practical” self is oriented toward the things confronting her and forming the external world, the “appreciative” self is able to perceive “the internal, intimate and profound” within.⁴⁷ It is through distinct experiences of time and space that these two instantiations of the self can be apprehended. The efficient self has a segmented experience of the world by which the successive states of experience are isolated from each other through the self’s relationship to space. Because the external and practical prevail, the self becomes alien to herself (“the self here lives outside itself.”)⁴⁸ By contrast, it is the “deeper” self who is able “to reach the inner centre of experience,” and to give unity to a serial experience of time.

In classical *kalām*, time, whether finite or infinite, was a central differentiating feature between humans and God, while the world and the Qur’an, and whether they were co-eternal with God, were contentious issues requiring thorough discussions about God’s essence and attributes to determine the nature of various existents’ temporality. In Iqbal’s *Reconstruction of Religious Thought*, time is less apprehended as a given or as a property, than as a subjective experience by which the self apprehends her own existence and whether it remains prisoner of a series of “nows” or is able to live life in its temporal oneness.

Yet, for Iqbal, the world has a life of its own, in and through which God is manifest and requires from the human self a deep connection that can be attained with a way of being in the world instantiated in spiritual practices, especially prayer. Here, as in classical *kalām* and Islamic philosophy, the knowledge of nature is a way to know God and His acts. However, Iqbal, as most Islamic thinkers of the twentieth century, introduces the new category of “reality,” often equated with nature in *The Reconstruction of Religious Thought*. From this perspective, reality

encompasses nature but is not limited to it, as it includes what humans do and create when interacting with the natural world.

In both the observation of and action over nature, there is the possibility of a deeper connection between the self and God through what humans can see and do in the world. When Iqbal mentions the “Ultimate Ego” in reference to God, it is a way to stress the ways in which the human ego (the “*nafs*”) is connected to, and participates in, the divine through his being in the world rather than sticking to a radical separation between God and other existents (including the world and the self as in classical *kalām*), or the modern duality between the self and the world. Iqbal sees in the atomism of classical Ash‘arite *kalām* a way of capturing the uninterrupted “creation” and “energy” of God’s perpetual intervention in the world, “the flow of divine life.”⁴⁹

Here, Iqbal has a counterintuitive reading of classical Ash‘arite *kalām* which was structured on the basis of a radical separation between, on the one hand, God, and on the other hand, all other existents, humans and non-humans. Classical *kalām* scholars started their treatises with an extensive treatment of God’s existence, essence, and attributes, and including a negative theology (what God is not) drawing a clear line between Divine Being and human beings. This was a prior analytical exercise required to understand the nature of God’s intervention in the world through divergent versions of causality and atomism, that is, His power. By contrast, Iqbal, reading classical *kalām* from a Sufi perspective, is not interested here in divine power⁵⁰ (and even less so in the radical separation between God and humans), but rather in divine presence and God’s proximity to humans through selfhood.

For Iqbal the knowledge of nature is part of human fulfillment, and a way of honoring God and His selection of humans, among all other creatures, to be His representatives on Earth (Qur’an, *Al-Aḥzāb*, 72). This human interaction with nature requires not only scientific observation and material means, but should be guided by the right understanding of how the world and the self are tied to God. This relationship of the self to God and the world is instantiated in the act of prayer, which enables an intimate knowledge of and proximity to God; the “finite ego must be distinct, though not isolated from the infinite.”⁵¹

Realizing selfhood and humanness is therefore not restricted to contemplation and inwardness but rather requires action, interaction with the “external” world and its transformation. The holistic perspective on the world made possible by religion (rather than the sectional view of science) has an ethical value but is of no import if it remains a mere understanding: “power without vision tends to become destructive and inhuman,” yet “vision without power does bring moral elevation but cannot give a lasting culture.”⁵²

One consequence of Iqbal’s interest in the concreteness of material power is the importance of the state as an instrument for achieving the spirituality of Islam,

that is, the principle of *tawhīd* (God's unicity) instantiated in equality, solidarity, and freedom. In its Islamic version, the state can take the form of the caliphate. This might not be understood in its classical sense, but as an elected assembly representing a league of Muslim nations. What matters for Iqbal is whether contemporary forms of organization are in harmony with a "spiritual emancipation of the individual" and a "spiritual interpretation of the universe."⁵³

The possibility of a spiritual telos assigned to material structures emanating from modern science is better understood when related again to the question of the relationship between inner self and the world's concreteness. The future of Islam should be a horizon of reconciliation between the self's inwardness and the external world's materiality, as the gap between the inner and the outer has been unprecedentedly widened but also redefined and shaped by modern knowledge and power. On the one hand, "modern man has ceased to live soulfully, i.e. from within," and is subject to the "here and now" of the mere "fact." On the other hand, "the mysticism in the East" has withdrawn into "false renunciation."⁵⁴ And yet religion, before the emergence of modern science, was "essentially experience." Contemporary Muslims should renew what the revelation and Sufism were initially about, that is, the ability to embrace the world (of experience) from the inner self. Experience should not be confined here to the "observable reality," but refers rather to the "inner nature of reality"⁵⁵ entailing another time-space, distinct from and yet encompassing empirical reality.

The new significance of material reality is present in most contemporary works addressing Islamic thought's relevance for the present. For Abdellah Laroui (see chapter 13), the Islamic past (and consequently *kalām* and other shari'a knowledges) has no preeminence in and over the present because it is mere speech that has no relevance for the new material reality, and particularly industrialization, structuring the life of Muslims.⁵⁶ Neither revealed speech nor the speech about revealed speech says much about "facts," which are the only thing that matters. All facts, or put another way, the "objective" reality, point to the permanent comparison between Muslim countries and the West, and what is lacking and what needs to be done for those countries to transform the real.

Hassan Hanafi's *Min al- 'Aqīda ilā al-Thawra*⁵⁷ is another example of the centrality of material reality, here and now, in assessing the relevance of *kalām*. While embracing *kalām* themes and structures, Hanafi relies on the epistemological premise that "to hold a statement to be true requires an assessment by reason, and should be attested by reality that it is the case" (*lā yumkinu al-taslīm bi-shay' 'alā annahu ḥaqq mā lam yu'raq 'alā al- 'aql wa yuthbat fī al-wāqi' annahu kadhālika*).⁵⁸ The language and categories of inherited shari'a knowledges, and more specifically *kalām* as the foundational discipline of those knowledges, are evaluated in their ability to say the real. If they fail to tell the truth of the time, they should not be rejected but rather reformulated, and their link to the real (re)established.

The most fundamental and widely shared verbal expressions of beliefs and creed lack actuality if they are not understood in their relationship to reality. For example, the testimony of faith (*shahāda*) should be a way to testify to the real and the epoch (*shahāda 'alā al-'aṣr*), which entails showing the gap between the thought's content and the real (*bayān al-masāfa bayna al-wāqi' wa muqtaḍā al-fikr*), and overcoming it.⁵⁹ In a similar way, the opening of a prayer, an address, or initiating a deed under God's auspices when uttering *bismillah* (On the name of God), means also "on the name of the Nation" (*al-umma*), by which one is responsible to speak on behalf of the people and their interests.⁶⁰

In a materialist gesture, Hanafi is turning *kalām* on its head, and is interested in how *kalām* can be a vector of the transformation of the world rather than a discipline confined to speculation. He asks, "How can creed become a revolutionary drive among the people, and a theoretical foundation for their understanding of the real?"⁶¹ For Hanafi, classical *kalām* is more interested in dialectics than truth per se, such that rhetorical and demonstrative skills prevail over the subject matter, which is lost in the discourse. Hanafi's commitment to the real and to the concrete means that contemporary *kalām's* object should not be concerned about God's essence and related topics such as anthropomorphism (*tajsīd*), corporeality (*tajsim*), or associationism (*shirk*) in relation to God. Rather, it should be tasked to understand occupation, under-development, despotism, and poverty, and who is responsible for these.⁶²

Hence, the shift from classical to contemporary *kalām* should be a shift from the knowledge of God (*'ilm Allah*) to a knowledge of the human (*'ilm al-insān*), and entails a change from the knowledge of abstract creed to a concrete analysis of social conflict.⁶³ It means also leaving the theoretical introduction about atoms and accidents found in classical *kalām* for a precise assessment of reality and its components, and the socio-psychological analysis of the "masses." It requires not a knowledge of God's attributes but a knowledge of the Muslim reality of the present—that is, an understanding of the state of freedom, land, poverty, democracy, and development in Muslim countries.

Knowledge proper, for Hanafi, does not deal with the unseen (*ghaybiyyāt*) but is rather a commitment to the visible based on the "rational analysis of subject-matters or a scientific description of phenomena to grasp the visual and material truths."⁶⁴ While classical Islamic disciplines dealt primarily with texts, by which all rational effort was textual (*kullu jahdīn 'aqlī fī al-naṣṣ*), contemporary knowledge takes as its object visible phenomena (*ẓawāhir*) and requires an analysis of experience (*taḥlīl lil-tajārib*) in which the text is only one of the sources of knowledge, as science is understood here as "the knowledge of the real through the work of reason and sense-perception" (*'ilm bi-al-wāqi' ba'da 'amal al-'aql wa al-hiss fīhi*).⁶⁵

Hanafi's *Min al-'Aqīda ilā al-Thawra* and Iqbal's *Reconstructions of Religious Thought* are two examples of how *kalām* themes have been reframed in very differ-

ent ways in contemporary philosophical works. Classical works of *kalām* that are mostly works of metaphysics and theology, entailing a knowledge of God (His essence and attributes) and the (natural) world, continue to be transmitted, taught, and inform contemporary Muslim beliefs. But most contemporary works engaging with the revelation are interested in the latter's socio-legal and political relevance in the regulation of individual and collective life, that is, in how the revelation translates into practical prescriptions and proscriptions. These works assume a certain conception of God's essence and the natural world without addressing these as the core object of their inquiry. For thinkers like Taha Mahmoud Taha or Muhammad Shahroor, the revelation's regulative authority can still be relevant in contemporary times if the Qur'anic text is read anew to formulate a hierarchy of truth in God's speech that should be informing how Muslims assess the importance of jurisprudential rules in the divine message and in defining what is Islamic. What matters here is the differentiation between forms of speech within the Qur'anic text⁶⁶ in order to distinguish, in divine speech, between absolute and contextual truth, and between cosmo-ontological and practical truth. Accordingly these contemporary works address the question of formulation of jurisprudential rules, not from the perspective of jurisprudence (*fiqh*) or the sources of jurisprudence (*uṣūl al-fiqh*), but starting from a holistic engagement with the Qur'anic text and how it should be read and understood,⁶⁷ and necessitating an understanding of what revealed speech says about God's essence and His manifestation in the world.

Revealed Speech and the Sources of Jurisprudence

SHARI‘A KNOWLEDGES AND THE (RE)FOUNDATION OF THE POLITY

For many Egyptians, the ouster of President Mubarak after the demonstrations of January 25, 2011, opened up a horizon of possibilities but also of cleavages related to the nature of the political community to be formally (re-)constituted in the revolutionary context. Although the issue of the application of shari‘a by the state was raised by the Muslim Brotherhood as early as the 1930s and became a central element of the Egyptian political discourse beginning in the 1960s, it was raised anew amid the 2011 confrontation between “religious” groups (the Muslim Brotherhood, the Salafis) and “secular” movements (leftists, nationalists, liberals).

In March 2011, the constitutional declaration adopted by referendum replaced the 1971 constitution and endowed the elected parliament with the prerogative to elect a constituent assembly of one hundred members whose task was to write a constitution within six months, after which it would be presented for referendum. The constitutional debate that occurred in the revolutionary context was a unique moment of formulation of different conceptions of shari‘a and its relationship to the state. While several groups advocated for the removal of any reference to shari‘a in the new constitution, the Party for Justice and Liberty, affiliated with the Muslim Brotherhood, and the Nur party, affiliated with the Salafis, wanted the term *shari‘a* to remain in the text. However, while the Muslim Brotherhood pushed for the reference to “the shari‘a’s principles” as the main source of legislation,¹ the Nur party fought for the adoption of “shari‘a’s commands” (*aḥkām al-shari‘a*).

It was amid the debate about the proper role of shari‘a in the new regime to be instituted by the revolution that Sheikh Hasan al-Shafi‘i, the head of Al-Azhar’s delegation of scholars in the constitutional assembly, was asked to enlighten the group regarding the meaning of shari‘a. For Sheikh al-Shafi‘i, in a democratic state, Islamic scholars are part of a general institutional architecture based on the separation of powers and the independence of the judiciary system. As a collective entity such as Al-Azhar, Islamic scholars may have a constitutional status, they may be consulted to give legal opinions, and their knowledge may be valued, but their prescriptions are only consultative and never coercive. It remains the prerogative of elected officials to craft the law, and the task of judges to enforce it.²

In Hasan al-Shafi‘i’s approach,³ the reference to “the principles of shari‘a” reenacts shari‘a as a generative law requiring knowledge and skills, rather than as a set of fixed prescriptions. Most of Al-Azhar’s scholars agree that claiming the authoritativeness of shari‘a rules for collective life does not consist in merely applying rules directly from the Qur’an or the Sunna. From this perspective, the ability of the scholar to deal with the discipline of *uṣūl al-fiqh* (sources of jurisprudence) is crucial, for it precisely delineates the generative principles and procedures out of which legal rules may be formulated. Scholars who have a full command of this form of knowledge are usually qualified to practice *ijtihād* and are called *mujtahid*. However, not all *mujtahid* have the same skills or the same authority, for they may also be given a rank within a hierarchy of all the *mujtahid*. From this perspective, the reference to “shari‘a’s principles” in the constitutional debate does not mean the mere application of a set of an already available stock of rules, but calls for an open-ended work of truth-seeking carried out by the *mujtahid*.

While for several classical scholars (starting with the ninth-century scholar Muhammad Ibn Idris al-Shafi‘i) analogical reasoning and *ijtihād* were synonymous and would occur only when there is no authoritative textual source out of which rules may be formulated, subsequent scholars would also refer to *ijtihād* as the formulation of rules on the basis of a comprehensive understanding of the foundational texts. The delineation of the skills and qualities required for *ijtihād* and the conditions under which a scholar may reach the stage of *mujtahid* were usually part of the last section of *uṣūl al-fiqh*’ books. For classical and contemporary Islamic scholars, one cannot claim to be a *mujtahid* without a thorough knowledge of *uṣūl al-fiqh*, along with other disciplines, for instance exegesis of the Qur’an, science of hadith, and science of language.

The notion of *ijtihād* was central in the discussion about shari‘a at the time of the constitutional debate as it raised the question of the relationship between shari‘a, time, and reality. The ability of Islamic legal knowledge to respond to “social change” was among the most pressing issues discussed in Egypt, as well as in Muslim-majority countries, long before the revolutionary context. Although the question of “change” in relationship to shari‘a is a modern concern raised in

the colonial context and is closely related to the constitution of the “real-present” as an epistemic problem for Islamic legal knowledge (see chapter 7), it has also been discussed by postcolonial Arab intellectuals and Islamic scholars through the notion of *ijtihād*. In contemporary times, Islamic scholars revisited the notion of *ijtihād* in a way that stresses the ability of shari‘a to generate new rules in response to social change.⁴

However, if *ijtihād* has been widely claimed in the twentieth century, the broader question of the ways in which the scholar should deal with shari‘a and its foundational sources for legal purposes has been constitutive of Islamic legal knowledge at least since it was articulated in the first texts of *uṣūl al-fiqh*, notably al-Shafi‘i’s *Risāla* in the second century of Islam. From this perspective, any discussion about *ijtihād* entails a wider discussion about *uṣūl al-fiqh* and the procedures out of which legal rules may be formulated.

In this chapter, I would like to study more closely how shari‘a is constituted as generative law, requiring the scholar-*mujtahid* to deal with its foundational texts following the procedures delineated in *uṣūl al-fiqh*⁵ and involving other forms of Islamic knowledge. The production of Islamic legal rules is not available to anyone who can merely read the Qur‘an and the Sunna. It requires the scholar to have the knowledge and training not only to be able to give order and hierarchy to the textual sources and authenticate them when necessary, but also to determine their meaning. Studying the ways in which Islamic scholars relate the production of legal rules to *uṣūl al-fiqh* is needed to better grasp what “shari‘a’s principles” means from the perspective of Islamic legal knowledge in the revolutionary and postrevolutionary constitutional debates in Egypt. But it is also needed more generally to understand the task, skills, and labor of the *mujtahid* when engaging with the revealed law of Islam, for this issue is not only germane to the twentieth and twenty-first centuries, but was widely discussed among classical Islamic scholars. The revolutionary context, and more generally, modern times, did not put an end to the transmission of Islamic knowledges. Rather, it shed light anew on the centrality of shari‘a’s procedural knowledge for regulative purposes within the Islamic polity in a context where concerns about the ability of Islamic jurisprudence to accommodate social change are raised.

Uṣūl al-fiqh, as the discipline delineating the procedures out of which legal rules may be formulated for any scholar practicing *ijtihād*, gives order and hierarchy to the textual sources that record revealed speech, and deals with the linguistic conditions under which revealed speech calls for deeds. As understood by Al-Azhar’s scholars such as Hasan al-Shafi‘i, the reference to “shari‘a’s principles” in the Egyptian constitutional text reenacts the authority of the scholar-*mujtahid* who has mastered the discipline of *uṣūl al-fiqh* along with other Islamic forms of knowledge. This must be so, since the notion of “shari‘a’s principles” involves comprehensive generative procedures and inquiries rather than self-evident and

immutable prescriptions. It sheds light on the ambivalence of revealed speech, whose manifest nature paradoxically requires perpetual decipherment from the scholars in charge of enlightening the community.

AL-AZHAR AND THE TRANSMISSION OF ISLAMIC KNOWLEDGES

In Al-Azhar, lessons take place inside the mosque, in rooms devoted to scholarly activities. A scholar-teacher dispenses lessons about *fiqh* seated on a chair, while the students circle around him. During the month of Ramadan, the scholarly circles meet every day from noon to 6:00 p.m. in Al-Azhar Mosque or in a *maḍyafa* (guest house) made available to scholarly circles by a benefactor and used as a space dedicated to courses on various disciplines of Islamic knowledge. The audience includes Egyptians but also students coming from various parts of the Islamic world (the Arab countries, Sub-Saharan Africa, Central Asia, South East Asia, the Balkans).

The courses of jurisprudence consist in reading a commentary (*sharḥ*) on a primal text formulating the main points of the jurisprudential school (*matn*). A student reads the text, and the sheikh explains the main points. The oral commentaries of the scholar on the text, which is usually itself a commentary of a commentary, help the students understand how the rules of *fiqh* should be formulated.

Islamic jurisprudence is taught along with other disciplines considered part of the “shari‘a sciences” (*‘ulūm al-shari‘a*): Arabic language (*‘ilm al-lughā*), exegesis (*tafsīr*) of the Qur’an, the science of hadith, the sources of jurisprudence (*uṣūl al-fiqh*), *kalām* (theology), and *taṣawwuf* (Sufism). When the scholarly circle’s members discuss the training required to practice *ijtihād*, they usually say that it is required to know all these disciplines except *kalām* and *taṣawwuf*, but they also particularly emphasize the importance of mastering the sources of jurisprudence and the science of language. These forms of knowledge, more than any other, enable the scholar to formulate rules out of the two foundational shari‘a sources, the Qur’an and the Sunna. Moreover, as we will see below, the sources of jurisprudence rely heavily on the science of language.

The genre of *uṣūl al-fiqh* offers Islamic scholars self-reflexive insights on their labor of rule production within the discipline of jurisprudence. The formulation of legal rules is far from being arbitrary or based only on the memorization-transmission of the rules by the community of scholars. Rather, it displays an internal logic guided by the search for the (true) meaning of the revelation’s texts, for they are the site of the truth-good. For Islamic scholars, one cannot formulate Islamic legal rules by merely reading the Qur’an, but needs to know how to articulate words and facts within the categories of Islamic legal knowledge as delineated in *uṣūl al-fiqh*.

Although clearly distinct from each other, the disciplines taught in Al-Azhar Mosque and most Cairo's scholarly circles are also intertwined, as they all deal with different dimensions of revealed speech. These disciplines allow the scholar to address revealed speech according to three forms of inquiry: the authenticity of the revealed speech's sources, the meaning of relevant utterances of authentic revealed speech, and the order and hierarchy of the revealed speech's sources for jurisprudential purposes. Although I will focus here on the sources of jurisprudence, other knowledges such as the disciplines of *tafsīr* and hadith will also be mentioned insofar as they touch on the production of Islamic legal knowledge.

THE SOURCES OF JURISPRUDENCE AND REVEALED SPEECH

As mentioned above, *uṣūl al-fiqh* is a distinctive genre of Islamic legal knowledge that delineates the generative procedures upon which legal rules may be formulated. While books of *fiqh* describe the legal rules to be followed by Muslims, usually according to a classification of deeds based on the distinction between acts of worship (*'ibādāt*) and social transactions and relations (*mu'āmalāt*), they do not typically discuss the underlying assumptions and procedures out of which these very rules have been produced. It is true that the knowledge of legal rules for guidance within the local community does not require the scholar to know the generative procedures delineated in *uṣūl al-fiqh*; it is sufficient to memorize the rules. Yet, if the lowest ranks of scholars do not need to know *uṣūl al-fiqh* for the tasks they perform, it is mandatory for any scholar performing *ijtihād*, that is, dealing comprehensively with the authoritative textual sources and producing legal rules in response to new cases wherever there is no unequivocal textual evidence.

The formulation of Islamic legal rules requires several forms of knowledge, all related to the foundational speech of the revelation. Classical disciplines relied on by Islamic scholars deal with speech from distinct and yet intertwined perspectives. As the time following the revelation elapses and its direct witnesses are no longer among the living, the constitution of speech as the source of law across time and space requires the community to establish what kind of speech is authoritative for legal purposes.

Although Islamic scholars share the general assumption that God's speech has been revealed to humans in order to be followed by them and instantiated in material deeds, not all divine speech is performative, and not all performative divine speech is homogenously consequential. Works of *uṣūl al-fiqh*, particularly in the part dedicated to the Qur'an (the first source of jurisprudence among the hierarchy of sources), allow jurists to differentiate between forms of speech and classify them for legal purposes. Under what linguistic-grammatical conditions is speech expected to produce deeds, and be literally materialized in the world? This rela-

tionship between speech and deeds is itself the condition of possibility of shari‘a as both revelation and law.

Revelation is already the foundational event, *the* speech-act instituting different orders of existence that reflect the duality and coextensiveness of divine and human speeches. God’s speech, as transmitted in the Arabic language, is perpetually generative of human deeds. Yet, although manifest, the meaning and the consequentiality of divine speech is not self-evident but requires the labor of (linguistic) reason, enlightened by the Prophet’s deeds and sayings, to extract deeds from words. That is why the production of a legal rule begins with the search for truth, or more precisely, with the search for the true meaning of the Qur’anic utterance, which is itself grounded in the knowledge and right use of linguistic rules.

For classical Islamic scholars (such as al-Ghazali in *Mustasfā*), although God’s speech is incommensurable to human speech, it can still be transmitted and communicated to humans. God only is able to endow creatures with the knowledge of His words without the mediation of any letter, sound, or sign (*min ghayr tawasuṭ ḥarf wa ṣawt wa dalāla*). Also, God alone may enable humans to hear His words without the mediation of any sound, as has been the case for Moses, Muhammad, and all other prophets. Even if humans have access to the words of God only through the mediation of angels and prophets, divine speech remains unaltered, for God speaks through them.⁶ As such, the words of the Prophet Muhammad do not have legal authority, or more precisely, they have legal authority only to the extent that they reveal God’s injunctions.⁷

At the time of the revelation itself, the Prophet Muhammad made a clear distinction between the utterances that should be attributed to him, and those that are God’s words. Both speeches are part of the revelation (*waḥy*), and both are transmitted to humans by the Prophet’s tongue. God’s words were memorized, recited, and preserved by the *qurā’* (reciters), but it was under the Caliphs Abu Bakr and ‘Uthman—both Companions of the Prophet Muhammad—that the Qur’an was collated in one volume. For subsequent generations of Muslims the authenticity of the Qur’an, as well as its authoritativeness for the guidance of collective and individual life, was without doubt. Since the second century of Islam, the main issue was whether the sayings of the Prophet Muhammad were binding, and if so, how one should relate them to Qur’anic speech.

GIVING ORDER AND MEANING TO REVEALED SPEECH: SHAFI‘I’S *RISĀLA*

How should one deal with revealed speech for “practical” ends, that is, for legal purposes? To a great extent, the work of Muhammad Ibn Idris al-Shafi‘i, *al-Risāla*, is a response to this question.⁸ As mentioned earlier, I mean here by “legal” the epistemic conditions under which speech calls for deeds. The labor of the *Risāla*,

and all subsequent works of *uṣūl al-fiqh*, consists in differentiating *within* revealed speech (*waḥy*), and allows Islamic scholars to think about the differences and intertwinements between God's words—the Qur'an—and the Prophet's sayings—the Sunna—and their implication in terms of rule production.

Starting with the *Risāla*, the works of *uṣūl al-fiqh*, particularly when dealing with *ijtihād*, accept revelation as a generative speech even when it seems that it does not speak about new deeds, events, and situations occurring in the life of individuals as well as the community. From this perspective, *uṣūl al-fiqh* delineates the epistemic conditions under which revealed speech generates deeds, but also deeds generate revealed speech, or more precisely, make the silence of revealed speech speak. In other words, revealed speech gives life as much as life addresses revealed speech.

Al-Risāla gives formal shape to the revelation's speech according to its authoritativeness (who is the "author" of speech, God or the Prophet?) as well the explicitness of its utterances.⁹ Although Shafi'i does not use the name "*uṣūl al-fiqh*," the *Risāla* is considered the first work delineating the contours of what would be known later as a proper genre-discipline.¹⁰ Most importantly, the *Risāla* posits the Qur'an, the Sunna, consensus (*ijmā'*), and *ijtihād* as the four sources of jurisprudence, and establishes their hierarchy as well as the ways in which each one is related to the other. The *Risāla* also explores the method for securing the meaning of utterances in the Qur'an and the Sunna, as well as the extent to which the Prophet's reported sayings and deeds in the latter source are authentic.

As exemplified by *bayān*, the key notion explored in the *Risāla*, al-Shafi'i is interested in making the meaning of speech manifest. *B-y-n*, the root of *bayān*, refers to the act of separating, showing, and making evident—unveiling and signifying. As used by al-Shafi'i, *bayān* may be understood as the ensemble of signs and significations meant to be disclosed for whoever has been addressed by Qur'anic speech. Although revelation is the speech-event that sustains itself by itself, and does not need any form of recognition by humans, it nevertheless establishes the possibility of transmission and communication between distinct ontological orders—as well as within the community—as it *addresses* speaking and listening beings. Yet, the signs of the *bayān* are not homogenously explicit and require different labors of decipherment. Put in al-Shafi'i's words, "God's rules" (*aḥkām Allah*) are either explicit (*naṣṣan*) for the addressee, or need to be formulated after the work of inferential reasoning based on evidence (*istidlāl*).

The labor of *uṣūl al-fiqh* consists in producing classifications of and within revealed speech according to both its authorship and its degree of explicitness. More specifically, following al-Shafi'i's *Risāla*, the signifying revealed speech includes four main categories:

1. What has been signified explicitly to "God's creatures" (*mā abānahu lī-khalqihī naṣṣan*) in the Qur'an.¹¹ This refers to obligatory deeds (prayer,

- almsgiving, pilgrimage, and fasting) as well as to prohibitions (such as wine and fornication and eating blood, the dead, and pork).
2. The detailed deeds associated with the general obligations (mentioned in the first category) and “signified by God through the tongue of His Prophet” (*bayyana kayf ‘alā lisān nabīyyihi*), including the number and time of prayers.
3. What has been instituted/legislated by the Prophet (*mā sanna rasūl Allah*) and for which there is no textual/explicit rule (*ḥukm*) of God. Although this category of speech does not correspond to God’s speech, it is nevertheless authoritative because God made obedience to His Prophet (*tā‘a*) and his commands obligatory. Or put another way, the Prophet’s speech is authoritative only to the extent that it is God’s command.
4. What God has prescribed as *ijtihād*. Determining the direction in which Muslims should pray (*qibla*) in a place where “the eye is not able to envision the Great Mosque of Mecca (*masjid al-ḥarām*)” is an example of *ijtihād*. In this case, “God has oriented his creatures toward the use of *ijtihād* . . . which relies on reason that he endowed them with.” Reason is not only the faculty able to produce differentiations (“reason distinguishes between things and their contrary”), but most importantly, the faculty able to distinguish between, and read, the signs (*‘alāmāt*) out of which the right orientation of prayer may be known in a situation where the Great Mosque of Mecca cannot be seen by the eyes. These signs are co-present to humans in the world and include “mountains, nights and days and winds” as well as “the sun, the moon and the stars which rise, set and positions can be known from the heavens.”¹²

Unlike the “extraction” of rules from God’s words and the Prophet Muhammad’s sayings, *ijtihād* does not deal with revealed speech as such. Rather, it is an event, a deed or a situation for which the scholar cannot find a corresponding speech that makes him turn to *ijtihād*. And yet, it is precisely out of the possibility of addressing revealed speech in search of the rule that *ijtihād* is enabled. From this perspective, there is no difference between, on the one hand, the production of rules directly from the Qur’an and the Sunna, and, on the other hand, from *ijtihād*, as both are based on the relationality between scholar and revealed speech, and both reenact the authoritativeness of revealed speech. Now, of course, the difficulty of *ijtihād* lies not only in making revealed speech speak out of silence, but also in the attempt to produce a rule that may or may not be true. That is why the very notion of *ijtihād* stresses the effort that one should rely on in a situation of silence and uncertainty.

If the production of rules out of revealed speech, as well as *ijtihād*, is the movement from revealed speech to life, enabling words to give life and shape to deeds,

it exemplifies also the movement from life to revealed speech, making deeds the events addressing revealed speech, for there is no situation or case to which revealed speech cannot speak. However, when the scholar-jurist makes revealed speech speak, it does not mean that his words can be part of revealed speech, for the integrity of the latter is clearly differentiated and delimited from other forms of speech, and preserved in the double movement of writing and memory. Rather, the scholar performing *ijtihād* can only establish a relationship between his speech and revealed speech through analogical reasoning (*qiyās*), since revealed speech encloses not only rules to be followed, but also the forms and relations out of which new rules may be generated as a response to life and its events.

As implied in the very notion of *qiyās*, the production of rules occurring under this category is constituted through the relationality inscribed in analogy. The distinction between rules directly “extracted” from the Qur’an and the Sunna, and the rules produced by *qiyās*, assumes the correspondence between (revealed) words and deeds as well as the possibility of their mismatch. When a deed, a case, a situation occurs where there is no corresponding utterance-prescription in revealed speech, the task of the scholar-jurist is precisely to find the elements of correspondence between them.

WORDS AND DEEDS

After the deaths of the Prophet and his Companions, several questions arose regarding the conditions under which deeds may be prescribed or prohibited, or one may say, regarding the conditions under which one may speak in the name of revealed speech. For scholars of the first two centuries of Islam like al-Shafi‘i, knowledge (‘*ilm*), grounded in the Qur’an, the Sunna, consensus, and analogical reasoning is required to utter judgments about deeds, for “not anyone can merely say: ‘this is lawful or this is unlawful.’”¹³ The possibility of production of truth-claims about and differentiations of deeds is predicated on the very notion of human knowledge of the foundational texts, distinct from and mediating between revealed and unscholarly speech. The possibility of revealed speech, as mediated by knowledge, (re)-establishes the distinction between words and deeds, and enables the very notion of law, understood as the speech differentiating between and calling for deeds.

Knowledge of revealed speech requires knowledge of the Arabic language and its nuances, as the former has been transmitted through the “Arabs’ tongue” (*lisān al-‘arab*).¹⁴ The linguistic distinction between forms of speech addressing the general (‘*āmm*) and the particular (*khāṣṣ*) determines to whom God is speaking in the Qur’an. As relied on by Islamic scholars, this distinction grounds revealed speech in relationality, in which speech is not an end in itself but is instituted as a medium through which God apostrophizes humans. For example, when God says “We cre-

ated you men and women, and made you nations and tribes so you can know each other," it is clear for al-Shafi'i that "each self has been addressed by this speech at the time of God's Prophet, before and after it."¹⁵ But when God says "*Inna akramakum 'inda Allah atqākum*" (the most noble among you are, for God, the most pious) in the same verse of *Sūrat al-Ḥujurāt*, 13, He is differentiating between the people according to their piety, and referring specifically to those who are the most pious.

Within the community, not all individuals are required to perform acts of devotion (the obligatory prayer or the fasting of Ramadan), for these deeds are obligations only for those mature and endowed with sound mind (*bālighīn 'āqilīn*). Legal responsibility, understood as the call for or avoidance of deeds, is determined by the relationship between revealed speech and its addressees. Yet the addressees of revealed speech are not self-evident and are identified by scholars on the basis of revealed speech itself. Only those who are endowed with reason, or more precisely, those able to grasp the significance of obligation, are constituted as addressees of revealed speech. For example, the insane (*majnūn*) or the young boy (*ṣabiyy*) before reaching maturity (*bulūgh*), are not considered addressees, and are not expected to perform the required deeds. Legal subjectivity is possible only at the moment one becomes addressed by revealed speech. Yet, the addressee is not necessarily anyone who can read and understand the verses of the Qur'an, or the sayings of the Prophet. Rather, the addressee is any person who can grasp the notion of obligation itself, and be addressed by scholars who mediate between the knowledge and understanding of revealed speech and the community.

REVELATION AND FORMS OF SPEECH

If Islamic scholars, and more generally Muslims, refer to the revelation and revealed speech (*waḥy*) as the foundational moment for the institution of law and the deeds it prescribes, they nevertheless clearly distinguish between God's words and the Prophet's sayings. At the time of al-Shafi'i, it was not a matter of consensus that the Prophet's speech would be authoritative for legal purposes. Al-Shafi'i's *Risāla* may be read precisely as an attempt not only to institute the Prophet's words as authoritative in relationship to deeds but also to show how the Qur'an's prescriptions should be understood in the light of the Sunna, and more generally how to think about the two forms of revealed speech in relationship to each other.

Establishing the relevance of the Sunna on firm grounds for performative purposes does not mean that the latter may have an authority superior, or even equal to, the Qur'an's. Here, authority is determined by the following question: when the forms of revealed speech mention the same deeds in distinct or even divergent ways, which words prevail over the other? For Islamic scholars, if God's voice and the Prophet's are clearly distinct, they are never discordant. Assigning a formal

status to the Sunna, as al-Shafi'i does in the *Risāla*, goes along with the institution of a hierarchy of sources, in which the Qur'an is the highest source-speech from which prescriptions of deeds are derived. At the same time the proper authority of the Sunna is (re)established, the authority of the Qur'an over the Sunna is reaffirmed, as exemplified in the resolution of possible divergent prescriptions. The Prophet's sayings can never "abrogate" the words of the Qur'an (*al-sunna lā nāsikha lil-kitāb*)¹⁶ but are always in accordance with and following the latter.

In *Sūrat Yūnus*, 15, God addresses specifically the question of revelation, Qur'anic revealed speech, and the denial of divine authorship: "Whenever Our messages are conveyed to them in all their clarity, those who do not wish to meet Us say: 'Come with a recited speech (*qur'ān*) other than this, or alter it. Say [O Messenger]: 'It can never be possible for me to alter it of my own will; I follow only what has been revealed to me.'" For al-Shafi'i, this verse shows that God has compelled His Prophet to follow only what has been revealed to him, and to never change God's words for others, but also to never abrogate God's speech with his own sayings. Moreover, the abrogation of Qur'anic utterances occurs only with the Qur'an (that is, with other Qur'anic utterances) as it is recalled in the Qur'an itself in *Sūrat al-Ra'd*, 39.

When al-Shafi'i, as most Islamic scholars, says that the Prophet Muhammad has shown the community how to perform certain deeds prescribed by the Qur'an, he is referring not only to the Prophet's speech but also to his deeds. For the Sunna consists precisely in positing, showing, and making clear (*sanna*) God's speech, and is not, therefore, restricted to Prophetic speech. However, the description of the exemplary deeds of the Prophet is transmitted by their witnesses through speech, which has been put in writing and collated several generations after the Prophet's death. These deeds literally embody God's speech and show the community how to perform divine prescriptions. The twin nature of the Sunna—direct speech and witnessed deeds—reenacts the foundational relationship of speech to deeds in the institution of the law.

REVEALED SPEECH AND *IJTIHĀD* IN THE MODERN POLITY

Keeping in mind the ways in which *uṣūl al-fiqh*, starting with al-Shafi'i's *Risāla*, deals with revealed speech, the mention of "shari'a's principles" in the Egyptian constitution (discussed above) may be understood as a reference to revealed speech within a juridical-political language that authorizes itself from itself, or more precisely from the self-enunciatory capacity of the state, which does not require the reference to a speech other than the one that it utters. While the juridical-political language of the modern state mentions "the people" and "the nation" that it claims to represent as part of the same (worldly) order of existence, the reference to

revealed speech introduces a distinct order of existence whose signs need to be deciphered and translated into the juridical-political language of the state.

For the community to be guided by the scholarly discussion of *uṣūl al-fiqh* and *ijtihād*, the authority of revealed speech needs to be formally acknowledged within the language of the nation-state. The constitutional mention of shari'a allows the national community to have this conversation as it formally allows the voice of Islamic scholars to be heard. Yet, it is a possibility that does not predetermine the practical content of the reference to shari'a, as it enables the Islamic scholarly discussion of *uṣūl al-fiqh*, with its distinct approaches and disagreements, rather than the adoption of set of fixed shari'a rules.

In premodern times, there were also controversies about the authoritativeness of revealed speech. However, disagreements—notably between *ahl al-hadīth* (the people of hadith) and *ahl al-ra'y* (the people of reasoned opinion)—were about the ways in which revealed speech is authoritative, and especially whether the Sunna is authoritative for legal purposes. In modern times, it is the authority of revealed speech as such, including both the Qur'an and the Sunna, that is contested. For seculars, the disciplines dealing with revealed speech can no longer pretend to be forms of knowledge out of which rules regulating collective life are formulated, as it is now the realm of state law and modern juridical sciences to do so.

The contemporary *mujtahid* is not only asked to deal with new cases but is required to deal comprehensively with shari'a sources in response to the claims and constraints of the modernist legal-political order. His task is to carve a place for the Islamic episteme within the modernist episteme, as the former assumes the authority of revealed speech for the regulation of collective and individual life, while the latter does not acknowledge it. To a great extent, the contemporary *mujtahid* needs to speak and mediate between the two epistemic-legal languages while reenacting the authoritativeness of revealed speech.

Put another way, the main concern of contemporary Islamic scholars and several segments of Muslim societies, including Islamic movements, may be translated into the following question: How can the authoritativeness of revealed speech for legal purposes be ensured within the contemporary polity structured by the language, forms, and episteme of the modern state law? While several Islamic scholars advocated for a more or less formal role within the modern polity, the extent to which this role should be constitutionally acknowledged within state institutions has been debated. Most important, contemporary Islamic scholars wrote extensively on the qualifications and forms of knowledge required from the scholar-jurist for him to be authorized to deal comprehensively with shari'a and speak in its name in the modern context.

One of the main difficulties raised by the question of shari'a's authoritativeness may be captured by the following questions: To what extent is revealed speech as

collected in shari'a's textual sources coextensive to specific forms of knowledge and life? Can inherited forms of knowledge dealing with revealed speech generate distinct forms of life and legal regulation in a context where new forms of knowledge and a new legal order have been generated?

The will to authenticate, decipher and give order to revealed speech, as well as the will to understand its nuances and subtleties, has guided the development of various forms of Islamic knowledge for centuries. Yet Islamic scholars, while regulating collective life and dealing with a multitude of cases in everyday life, never felt the need to develop what we call today the knowledge of "the social," "the real," and "the present." It was only at the end of the nineteenth century that "the real" was posited as a problem (as discussed in chapter 7) requiring a comprehensive approach and a reassessment of the Islamic episteme as the ability of inherited forms of knowledge to translate revealed speech into deeds in the modern context was questioned.

Following al-Shafi'i's *Risāla*, major works of *uṣūl al-fiqh* (al-Ghazali's *Mustaṣfā*, or al-Shatibi's *Muwāfaqāt*) that are relied on by contemporary Islamic scholars belong to the same episteme in which knowledge is produced in relation to revealed speech, as it is revealed speech and the meaning of its utterances that need to be known for humans to live and act in accordance with the revealed law. Moreover, like al-Shafi'i's *Risāla*, these works reenact the authority of the Qur'an and the Sunna as the two fundamental sources of jurisprudence (followed by consensus and analogical reasoning), and carve out the space of *ijtihād*.

CLASSICAL *IJTIHĀD* AND ITS REQUIREMENTS

Literally, *ijtihād* refers to the effort made by someone while doing difficult deeds. In Islamic jurisprudence, *ijtihād* refers not only to the effort made by the scholar in his attempt to formulate legal rules, but also to the specific knowledge produced by the scholar when the Qur'an and the Sunna are considered silent or uncertain. In his search for the right legal rules, notably when confronted with new cases, the *mujtahid* is expected to pursue his intellectual efforts until he reaches his own limits. For classical scholars like al-Ghazali, *ijtihād* refers also to the ability of the scholar to deal comprehensively with the Qur'an and the Sunna, which involves the mastering of the discipline of *uṣūl al-fiqh*.¹⁷

For classical scholars, there are several epistemic conditions that need to be met for the scholar to practice *ijtihād* and be considered a *mujtahid*. These epistemic qualifications all deal with revealed speech and are related to the scholar's ability to grasp its order and meaning. The scholar is expected to know the Qur'an, and more specifically, the *āyāt al-aḥkām* (verses of the rules) whose materiality and practicality inform the formulation of legal rules, and estimated to be around 500 *āya*.¹⁸ The scholar should also know the hadiths (reported sayings and deeds

of the Prophet) dealing with rules, which are estimated to amount to several thousand.

Yet, this substantive knowledge of the relevant foundational texts does not necessarily mean that the scholar has the skills “to extract” from it legal rules. The scholar is also expected to master the procedural knowledge, including the linguistic rules under which revealed speech, while addressing the whole community or only a group of people, calls for deeds (or prohibits certain deeds) to be performed under certain conditions of time and space. Along with the science of hadith which determines the truthfulness of the transmitted reports about the sayings and deeds of the Prophet, the knowledge acquired by the classical *mujtahid* in *uṣūl al-fiqh* is mainly coextensive with the science of language (*‘ilm al-lughah*) as the latter remains the most helpful discipline in the search for the meaning of revealed speech’s utterances.

Although not dealing directly with revealed speech, the consensus of scholars and the use of reason are two other domains of knowledge that need also to be mastered by the *mujtahid*. While the knowledge of the scholars’ consensus allows the *mujtahid* to not formulate legal opinions that would contravene what the scholarly community has already agreed upon, the use of reason enables the scholar to delimit the almost limitless space of human action unbound by the rules as extracted from revealed speech. In the latter case, the use of reason is associated with the original removal of commands (*mustanad al-nafy al-aṣlī lil-aḥkām*), that is, the removal of hardship and difficulties for human deeds (*suqūṭ al-ḥaraj*).¹⁹ For any deed, fact, or event that may be assessed against its lawfulness, the foundational principle remains the original “authorization” and “spontaneity” of human action that can be bound only by an explicit text or related to the textual sources through analogical reasoning. For example, the use of reason allows the scholar to determine that Muslims are not required to fast *Shawāl*, the month following Ramadan, as the textual proofs mention only the obligation of fasting for the latter. The use of reason allows also the scholar to establish that a sixth daily prayer is not a legal obligation for Muslims, as the proofs unveiled by revealed speech show that the obligation covers only five prayers.

While the qualifications required from the *mujtahid* are all oriented toward revealed speech and the ability to grasp its meaning, the object of *ijtihād* itself is devoted to the formulation of new legal rules notably in response to events, facts and deeds as it opens up an epistemic space in which individual and collective life can perpetually be related to revealed speech on a case-by-case basis. Yet the object of *ijtihād* should deal exclusively with matters for which there is no certain proof (*dalil qaṭ‘ī*). For example, it is not expected that the scholar will rely on *ijtihād* to determine whether the five daily prayers or almsgiving are obligatory, as these rules already belong to the domain of certainty as agreed by the community of scholars and proved by the textual source.²⁰

IJTIHĀD IN CONTEMPORARY TIMES

Compared to classical works of *uṣūl al-fiqh* where the main subject-matter is the procedures upon which legal rules may be formulated on the basis of the right understanding and use of revealed speech and in which the last chapter usually deals with *ijtihād*, works by scholars since the beginning of the twentieth century have been increasingly devoted entirely to the specific question of *ijtihād*.

The question of *ijtihād* has also been part of the modernist discourse as contemporary Muslim thinkers showed an interest in it, and believed that the reliance on it would allow Islamic normativity to better cope with the changes brought about by modern life. The “reopening of the gate of *ijtihād*” has been, and still remains, a widely circulated trope, as it is expected that it would lay the ground for an intellectual “re-foundation” of Muslim societies and systematize the adoption of “enlightenment thought” and modernist modes of reasoning. Yet, the meaning and scope of *ijtihād* as understood by modernist intellectuals remain distinct from its technical meaning and usage within Islamic legal knowledge.

Contemporary Islamic scholars are under contradictory pressures from different segments of Muslim societies.²¹ On the one hand, they are expected to be the custodians of the normativity of Islam and its effectiveness at a time where modern life and state legislation seem to threaten what is understood as the Islamic life and *shari‘a*’s authoritativeness. On the other hand, Islamic scholars are also required, particularly by the state and economic elites, to legitimize these very social, economic, and political changes associated with modern life. In response to these contradictory pressures, several Islamic scholars claim that their role is precisely to rely on a balanced perspective that represents “the middle ground” (*al-waṣaṭiyya*) between the two views.

The way texts are understood and relied on for the purpose of rules formulation is the main epistemic source of disagreement among scholars asked to give legal opinions about various aspects of contemporary life. For Islamic scholars who are proponents of *al-waṣaṭiyya*, “the neo-*zāhiri* school” remains subjugated to a literal-textual approach (*naṣṣi wa ḥarfī*), relying excessively on the hadiths without taking into account the procedures of rule production delineated in *uṣūl al-fiqh* or the ultimate goals and objectives of the revealed law (*maqāṣid al-shari‘a*). For the proponents of *al-waṣaṭiyya*, it is on the basis of this literalism that some scholars have declared, for example, that technological innovations (photography, television, or cinema) are unlawful, as they read literally a hadith condemning the act of picturing. On the other hand, *al-waṣaṭiyya* scholars would also distance themselves from the “excess of permissiveness” which consists merely in making lawful “the real as it is,” or “as wished by political power,” as it reflects a form of defeatism in the face of Western civilization and its way of organizing collective or individual life.²²

As the school of middle ground between permissiveness and harshness, *al-waṣaṭiyya* endeavors to reconcile the commitment to shari‘a’s texts with its ultimate goals and objectives (*maqāṣid*), in which the particular cannot supersede the holistic, or the probable what is certain. In this approach, the textual prescription that has been established as certain as regards both its authenticity (for the hadith) and its meaning (for example the obligation of fasting during the month of Ramadan) cannot be the object of *ijtihād*. In the meantime, *al-waṣaṭiyya*’s scholars underline the need to take into account the “spirit of the time” and “its needs”; in modernity these include the industrial and technological revolutions and major epistemic changes, including the development of new forms of knowledge.²³

In the contemporary Islamic scholarly field, disagreements over the production of legal knowledge reflect not only distinct understandings of shari‘a’s texts, but also a fundamental agreement about the relationship between “texts” and “reality,” in which the community should get back to the latter to orient and regulate collective and individual deeds in “the real.” Both assume that “texts” are distinct from “reality,” as they belong to both divine and mundane orders of existence, and embody the bridge between the two. In fact they are as “real” as the social reality they regulate, but their content as well as their authoritativeness, notably the Qur’an’s, is not subjected to the passing of time or the change of space. Hence, the delimitation of the intertwined spheres of “the certain” (*qaṭ‘ī*) and “the probable” (*ẓannī*) within shari‘a’s texts determines the space of *ijtihād* and its limits, and the scope of disagreement among Islamic scholars.

Contemporary secular thought in Muslim societies assumes that shari‘a’s texts have no authority over the real but are rather part of the real and the production of human activity, without being the ground on which rational truth may be based. These texts, like any other text, should be subjected to “critical reason” and to the same methods relied on by human and social sciences to study the real. Their meaning can only be “historical”; they may provide a way to understand past Muslim societies but cannot be relied on to regulate their present and future without questioning. They represent one discourse among others in the public sphere and it remains the choice of each individual to follow that path in his private sphere.²⁴ In this reading there is no room for the central distinction between certainty (*qaṭ‘ī*) and probability (*ẓannī*) made by both classical and contemporary Islamic scholars when dealing with shari‘a’s foundational texts. Revealed speech cannot be associated with certainty, since the notion of revelation itself is contested, often depicted as closer to myths, and can never pretend to be a form of knowledge.

The language of *ijtihād* instantiates the labor of time on the production of Islamic legal rules on the basis of the distinction between “immutable” rules and the ones that are subject to change as they reflect the movement of life. From this perspective, Islamic legal knowledge shapes collective and individual Muslim identities as it reenacts a hierarchy of rules to be followed by Muslims for them “to

remain” Muslims in a context where several aspects of social change associated with modern life are perceived as having been, and still being, introduced by the Western Other. Neither a full rejection of social change, nor a full acceptance of it, *ijtihād* relies on the work of Islamic legal reason and the distinction between the certain and the probable within revealed speech that overlaps with the distinction between immutability and change, to judge the lawfulness of practices and deeds displayed in contemporary life.

IJTIHĀD AND SHARI‘A’S ULTIMATE GOALS

To what extent need the prescriptions formulated in revealed speech’s utterances be followed merely because they are part of the revelation? While this question was raised by classical Islamic scholars, it is also a question that has been raised from a different perspective by several Islamic scholars since the beginning of the twentieth century, echoing comparisons between Islamic jurisprudence and modern state legislation. It is true that for classical scholars, shari‘a rules have been established in relation to underlying “reasons” (*‘ilal* or *ḥikam*) that can fully be understood and grasped by humans, except for some acts of worship.²⁵ Yet the study of shari‘a on the basis of its *maqāṣid* (ultimate goals), developed by Abu Ishaq al-Shatibi and used by contemporary scholars, particularly reformists, is distinct from the notion of *‘illa* (ratio legis) that is usually associated to a particular rule prescribed by a specific revealed speech’s utterance, as the *maqāṣid* are the broader goals to which the latter can be related.

While the jurisprudence based on *maqāṣid* was mentioned by al-Ghazali in the eleventh century and systematically developed by al-Shatibi in the fourteenth century, it was not until the twentieth century that it became widely relied on by Islamic scholars interested in *ijtihād*, and more generally in a jurisprudential method that would allow for a comprehensive and “flexible” approach when dealing with new issues arising in modern times.²⁶ The legal method known as *fiqh maqāṣidī* (jurisprudence based on the ultimate goals of shari‘a) relied on by several Islamic scholars when dealing with contemporary life reflects a language that may be understood, if not shared, by the proponents of secular modernity. While the authoritativeness of Islamic legal rules is grounded in the act of revelation itself, the *fiqh maqāṣidī* assumes that there are broader goals to which a rule prescribed in revealed speech is related. The scholar’s task is to unveil these goals to have a better understanding of the specific rule, but also to orient its application.

Both the *‘illa* (ratio legis) and the *maqāṣid* (goals) allow us to formulate a rule under which new events, facts, and deeds occurring in the world can be subsumed. Yet, while the *‘illa* of a legal rule is displayed in the relevant specific shari‘al textual utterance, the *maqāṣid* (goals) are not listed as such in a specific textual passage and constitute a higher level of generality and abstraction. For example, although

the Qur'an explicitly prohibits only alcohol derived from grapes (*khamr*), the 'illa allowing scholars to extend this prohibition to other liquors or substances is the intoxicating effects (a feature shared by all these liquors and substances) that cloud human judgment. The approach in terms of *maqāṣid* would consider that the prohibition of *khamr* should be understood not only as an end in itself, but as a means to achieve a higher goal, which is the protection of reason, alongside the four other higher shari'a goals.

Although the jurisprudence based on *maqāṣid* does not refer to a specific textual passage, the five goals are not formulated a priori. Rather, following al-Shatibi, scholars relying on the *maqāṣid* claim textuality and ground their approach in shari'a texts. However, this approach is not based on a literal reading of a limited number of passages but rather on a comprehensive reading of texts that goes beyond literalism. It delineates the five higher shari'a goals that also constitute a typology of human deeds under which actions occurring in the world can be subsumed.

For al-Shatibi, *uṣūl al-fiqh* does not belong to the domain of probable thought (*ẓannī*) but rather to the domain of certainty, as *uṣūl* are part of shari'a's totalities (*kulliyāt*). Open to doubt, probable thought cannot deal with shari'a's totalities but only with particulars (*juz'īyyāt*). As the first and foundational shari'a totality, shari'a's source (*aṣl*), if addressed by probable thought, would be subjected to doubt. Yet, for al-Shatibi, this approach cannot be valid in *uṣūl al-fiqh* as it would also subjugate everything to doubt and disagreement among scholars, including the sources of religion (*uṣūl al-dīn*) that are expected to provide the foundation of both religion and law.

As a set of procedural principles (*qawānīn*), the discipline of *uṣūl al-fiqh* provides the generative rules establishing a hierarchy between totalities and particulars, and determines the validity of the particulars by relating them to the totalities. For al-Shatibi, a particular issue or prescription raised by a specific passage of revealed speech is the proper object of probable thought and disagreement between scholars, and cannot determine the nature and meaning of shari'a's totalities.

On which grounds can certainty, associated with totalities, be firmly based? Proofs (*adilla*) of certainty can be established by the intertwined work of reason and transmission of heard speech (*adilla sam'iyya*). On the one hand, transmission can be invoked if the meaning of the cited passages is certain (*qaṭ'ī al-dalāla*), or if the meaning has been widely transmitted within the community (*mutawatira fī al-mā'nā*), or as the result of a comprehensive and deductive reading of shari'a's texts. On the other hand, reason is used in *uṣūl al-fiqh* not as pure reason or as a source of independent meaning (*mustaqilla bi-l-dalāla*), but as combined (*murakkaba*) with, and grounded in, transmitted proofs. This is because reason cannot legislate (*al-'aql laysa bi-shar'ī*), as shown in the discipline of *kalām*.²⁷

Almost all the proofs, when assessed on a case-by-case basis, still belong to the realm of probable thought (*ẓannī*). For example, even a textual passage that has

been usually considered by scholars to be widely transmitted (*mutawātir*) remains subject to doubt and probable thought as it enters the realm of disciplines such as the science of language that are relied on to determine the meaning and legal consequentiality of the passage. Yet, while each individual textual passage remains subject to doubt when addressed separately from the others, it is their combination and aggregation through a comprehensive approach that produces one meaning considered certain. For example, it is on this comprehensive basis that the five legal worshipping obligations of Islam (testimony of faith, prayer, fasting, almsgiving, pilgrimage) can be firmly established as certain.

Hence, for al-Shatibi, Islamic scholars did not stress the importance and centrality of the comprehensive approach as a methodological requisite for the discipline of *uṣūl al-fiqh*, and relied instead on the recourse to individual Qur'anic verses or hadith without aggregating them into a consistent ensemble of proofs.²⁸ A mere knowledge of transmitted revealed speech, or of a relevant Qur'anic verse or hadith relevant to a specific rule, does not constitute a sufficient proof in itself from the perspective of *uṣūl al-fiqh*. Rather, any attempt to establish certainty and proofs in *uṣūl al-fiqh* requires scholars to rely on reason, a reason supporting revelation, and considering things through the lens of revealed law (*al-'aql yanẓuru min warā' al-shar'*).²⁹

Al-Shatibi's approach requires a continuous engagement with revealed speech, since the formulation of a legal rule according to this approach cannot be based on one utterance of revealed speech that would be translated mechanically into a deed. While most classical works of *uṣūl al-fiqh* delineate procedures under which a scholar can deal with an individual passage (or several individual passages) of revealed speech for legal purposes, the jurisprudence based on *maqāṣid* deals with revealed speech as a comprehensive object of inquiry, allowing the scholar to determine the encompassing practical ends the revealed law aims to achieve.

When compared to a literalist approach, the approach in terms of *maqāṣid* seems less grounded in evidence. Actually, al-Shatibi initiates a shift regarding what constitutes acceptable evidence for Islamic jurisprudence, as the evidence lies in the relationality between a particular textual passage and the hierarchy of higher practical ends enabled by the scope of engagement with revealed speech. For al-Shatibi, the revealed law has been established to protect the five necessities (*al-ḍarūriyyāt al-khams*), namely religion, self, reason, offspring, and property, which cannot be found mentioned in these terms in revealed speech. The knowledge of these necessities has not been established by specific evidence (*dalīl mu'ayyan*), as the legal meaning of each individual passage remains in the realm of probable thought rather than certainty. But the comprehensive approach and a combination of inductive and deductive reasoning allows al-Shatibi to ground the principle of necessity (and the five necessities), as well as the foundational principles of jurisprudence, on certainty.

Al-Shatibi's principles give shape to a space of interpretation in which individual passages become one element among others in the scholar's attempt to secure the meaning of revealed speech on a firm basis. It opens up a distinct hermeneutic circle that allows the scholar to deal with the revelation's textuality with more freedom, as it widens the space of interpretation and yet overlaps with the hermeneutic circle based exclusively on the literalism of revealed speech's individual utterances. That is the reason why al-Shatibi is the classical scholar whose work has been revisited the most by contemporary Islamic scholars (and some secular intellectuals) in the Arab 2011 revolutionary context, and more generally in the twentieth and twenty-first centuries. His methodology allows them to address potentially contradictory expectations of both faithfulness to revealed speech's texts, and readiness to accept changes brought about by modern life.³⁰

PART FIVE

Genealogy

Canon Law and the Christian Self

Among the classics and great narratives on modernity, *Sources of the Self* and *The Secular Age* by Charles Taylor offer one of the most sophisticated, self-aware, and critical accounts of triumphalist Western narratives, attentive to both “its grandeur and misère.” Against simplistic accounts of morality reduced to obligations or the pursuit of interests, *Sources of the Self* rehabilitates the importance of distinct conceptions of the good and their relations to understandings of self and identity. It is an exercise in retrieval of background, implicit and unarticulated conceptions of the good and the self that are constitutive of the modern identity around three central components: the sense of inwardness, ordinary life, and the relationship to nature. For these three dimensions, Taylor studies the sedimentation of ethical, epistemological, and literary foundational conceptions and shifts that inform the constitution of the modern self in philosophical thought (starting with Plato), Christianity (beginning with Augustine), the Enlightenment, and Romanticism up to the twentieth century.

Taylor mentions the circulation and imposition of Western categories in non-Western countries since the early nineteenth century, with the still prevailing “sense of superiority,” “exceptionalism,” and “chauvinism” inherited from the Victorian era. In particular he notes the narrative of moral progress attached to “universal benevolence” and the “avoidance of suffering” informed by their Christian and secular variants, and reflected in the shaping of Western institutions internally, and their projection externally in non-Western countries. Taylor refers also to the critique of Western modernity inspired by Nietzsche, and formulated by the Frankfurt School and Foucault, by which the narrative of “progress” is, actually, also a history of structural exclusions and relationships of domination.

While Taylor briefly alludes to those two critical limits, he does not elaborate on their implications for an ethical conception of the self that claims to be universal. Taylor's genesis of the self in modernity does not address important questions that are, paradoxically, at the heart of his intellectual project. Taylor conflates the modern and the Western, and does not elaborate on the constitutive ambivalence of the concepts, institutions, and practices that have been historically produced in Europe and North America, and what the coercive colonial encounter (and the subsequent shaping of national and international institutions and exchanges in postcolonial times) entails for the "universalist" benevolence, which is the undisputed standard characterizing Western ethics and feeding its sense of moral superiority.

Take the word-concepts *al-ḥadīth*, *ḥadātha*, and *taḥdīth*, which refer, in Arabic, to the modern, modernity, and modernization, respectively, and which are clearly distinct from the word "Western" (*gharbi*). In the Arab and Muslim imaginaries (and many non-Western cultures), the modern has been historically associated with the Western, but it quickly became distinct and endogenous to non-Western societies. It is precisely this fundamental ambivalence that structures the relationship between the Western and the non-Western, and requires an analysis of the circulation of concepts, institutions, and practices across cultures.

My point here is not, obviously, that Charles Taylor should have studied conceptions of the self in other cultures, although he occasionally relies on anthropological accounts to draw comparisons between Western and non-Western cultures to demonstrate the distinctiveness of the West. Rather, my point is that the study of modern identity, and "a renewed understanding of modernity" as Taylor puts it, requires precisely the study of what enabled the constitution of global contemporaneity. To take again the Arabic word-concept of *ḥadīth*, it also means that which is present and contemporaneous, an understanding that is also attached to the "modern" in European languages. Hence, the study of modernity requires an understanding of the duality of time-spaces in the colonial and postcolonial eras, and at the same time, of global contemporaneity to which the circulation but also the simultaneous shaping of "modern" concepts, institutions, and practices are attached. As I showed in chapters 7 and 8, the "real" and the "present" became a new epistemic category and a source of jurisprudence for Islamic scholars since the end of nineteenth century that shifted the relationship to temporality in the production of knowledge informing conceptions of selfhood.

The study of Western identity's distinctiveness that Charles Taylor is interested in requires us also to attend to the question of universality, a recurrent theme of *Sources of the Self*, and a central claim common to the "self-interpretations" formulated by key Western thinkers and defining the relationship between the West and the non-West. Yet, the universal, and what is procedurally universalizable from the perspective of the subject, circulates in non-Western countries, and how this circulation *shapes back* the Western conception of the self, is not addressed in *Sources*

of the Self. The question of whether the (Western idea of) universal has ever been universal, and is unable to sustain itself outside of the West because it is inscribed in a relationship of power and of human hierarchies, is critical because it should clarify the extent to which these structural inequalities and discriminations are intrinsic to the Western concept(s) of the universal or a mere result of historical instantiations that would be a diverted course from a “pure” idea. In other words, Charles Taylor, who is yet known for enriching and testing philosophical investigations with historical and anthropological observations, does not ask whether the category of the universal can be set apart from the history of its circulation and “universalization” during colonial and postcolonial times, and never puts the very Western conception of the moral to the test in relation to what it claims to achieve.

Taylor does not address what enabled the West to sustain the claim of universality attached to a set of representations, concepts, and institutions. Ideas of rights, freedom, and individual autonomy certainly appealed to segments of non-Western societies, but the circulation of these categories and practices outside the West was enabled by an unequal relationship of power during colonial and postcolonial times. Without a study of this combination of coercion and seduction, of power and ethics, the trajectory of the Western universal cannot be properly understood. *Sources of the Self* insightfully analyzes how the Cartesian disengaged self, attached to instrumental rationality objectifying the world, unleashed new powers, notably in relation to nature. But Taylor does not explore how this translated into the shaping of a collective Western identity defining itself for itself as well as through its unequal relationship to the Other, and yet enabling this conception of the self to be attractive to segments of societies under Western domination.

This inquiry into the Western “universal” is relevant for Taylor’s intellectual project, which is interested in unveiling what structures the Western conception of ethics. Yet it is unarticulated, and its relevance has not been brought to the front, as Taylor does when discussing utilitarianism’s, or procedural rationalism’s, denials of the higher and constitutive goods informing their conception of the ethical and against which practices are assessed. This critical investigation into the “universal” is also in line with Taylor’s attempt to salvage the Western conceptions of ethics from the (neo-Nietzschean) critique leveled against its destructive effects—“the cardinal mistake of believing that a good must be *invalid* if it leads to suffering or destruction.”²¹ It should enable a discussion about whether the universal (instantiated in universal benevolence) can be preserved, revised, or wholly rejected either because of its historical instantiations or because of its conceptual aporias.

Now, Taylor’s own conception of the universal in *Sources of the Self* is not a certainty, and is certainly not the Kantian procedural universal, but it is nevertheless a possibility that should not be, a priori, ruled out, as it could emerge out of cross-cultural anthropo-philosophical conversations. Taylor raises the question of validity and commensurability of a conversation on ethics and its attached conception

of the good across cultures which hints to the potentiality of universals: "Until we meet this limit (of incommensurability), there is no reason not to think of the goods we are trying to define and criticize as universal."² Yet Taylor does not explore what the idea of commensurability itself does to the Western conception of the universal self, and whether it translates, actually, into cultural hierarchies and a relationship of power and subjugation of non-Western societies by which the Western self claims to be ethical while performing its universalization mission in its different colonial and postcolonial iterations.

The relationship of the Western self to the non-Western Other is also relevant when studying distinct "sources of the self" at key moments of modern history. If the self is never an atomistic entity, but always constituted by and situated in an inter-subjective process in which the Other is always present (a central feature of ethics stressed by Taylor in many of his works), then the question of the relationship between Western self and the non-Western Other cannot be ignored. This question should not, obviously, be raised in the abstract, but requires the conceptual and historical study of encounters between the Western and the non-Western when they were the most pervasive, in colonial and postcolonial contexts mirrored in Western philosophy and social sciences. This also means to attend to the question of how Western Europe and the West have been represented and historically enacted as *a collective powerful self*, and how the latter is organically tied to and has shaped (and been shaped by) the "punctual," "disengaged," and autonomous individual self. In that regard, Hegelian philosophy (whether *The Phenomenology of Spirit*, *Lessons on the Philosophy of History*, or *The Philosophy of Right*) conceptualizing the organic link between the collective self and the individual self is a major philosophical shift mirroring the early European civilizational (that is, universalist) ambitions at the beginning of the nineteenth century following the Enlightenment, the revolutions, and Napoleon Bonaparte's "expedition" to Egypt.

Here the law, exemplified in Hegel's thought, is central, as it offers the tangible and organic link between individual self and collective self, both conceptual and historical, that can be grasped intellectually and offering its own material reality and historicity. In *The Philosophy of Right*, the law is not only the positive shape of the first iterations of the self through material things (property) giving a concrete grounding to the individual, but it also negatively determines the self, unsatisfied with a mere legal and material determination, and withdrawing into its inner life, giving depth to the latter in this very withdrawal. As studied in chapter 12, the Hegelian ethical journey of the self is actually a journey of the individual self *becoming* part of the collective self mirrored in and through legal forms. This means the self is made through individual differentiation from and interaction with others: the family (a limited ethical form), civil society (competition and self-interests mitigated by corporations and other collective bodies), and finally through the state, an accomplished ethical form that instantiates collective agency

and an ethics of effectiveness and power universalizing rationality and rationalization to the non-European Other within the frame of “Universal” History. As a result, the ambitious philosophical history of the Western self in modernity that Taylor initiated in *Sources of the Self* cannot achieve its assigned objective without delving into the relationship to the non-Western Other as constitutive of the moral identity of the Western self (and its sources).

There are, obviously, many ways to study this relationship between power and ethics in the West and its circulation in non-Western countries. In this book, the study of the relationship between power and self (both Western and non-Western), between law and ethics, is also, in this part dealing with “Genealogy,” a study of *law as power*, and its relationship to material power. As I show in chapter 12, the Hegelian philosophy of history and philosophy of law offer an unprecedented narrative of the European collective integrating the Kantian moral (inner) self with a holistic ethics understood as action, assertiveness, and power on the stage of World History by which the most rational legal arrangements (embodied in the late eighteenth and early nineteenth-century civil codes of the European nation-states) circulate from Europe to the rest of the world in a process of “rationalization.”

What I propose in the next five chapters is precisely the study of the conceptual relationship between (legal) power and ethics at defining moments of European history, starting with early Christianity and going up to our time, with a particular interest in the key episodes of circulation of European institutions, categories and concepts during the coercive encounters of the late fifteenth century and in the nineteenth and twentieth centuries, and how they have been both imposed and a source of attraction in Muslim societies. (On their reception by elite segments in Muslim societies, see chapter 13).

In early Christianity, although the Church began setting rules regulating its communal life through the formulation of canons (with the foundational Council of Nicea in 325), the question of a law (*lex*) authored by the Church was a non-existent Christian theme at a time when a clear distinction was made between canons and law, the latter associated with the Roman Empire. In contrast, beginning at the end of the eleventh century, the law, and in particular canon law, became central in the regulation of both spiritual and worldly life, with theologians and lawyers thinking systematically about the different types of laws and their relations to each other.

For a major figure of early Christianity like Augustine, eternal law is mentioned in reference to divine goodness and to the cosmic order of things (“the eternal law is that by which it is right that all things be most orderly”) and in their relation to selves (“knowledge of eternal law is imprinted on us”).³ But what scholars of the High Middle Ages will call canon law, ecclesiastical law, or divine positive law (that is, the normative regime produced by the Church) were not part of the early Christian grammar. Under the Roman Empire, the Church was not yet the most powerful

institution regulating bodies and souls through the law and systematic micro-forms of institutional power.

It is this shift in the status of the law (and its materiality) in Christianity, and more specifically, the relation between an expanding canon law and the inner self structuring the Christian polity, that I study in this chapter, and that will determine the relation to the non-Christian Other through the conversion of Indians to Christianity in America in the sixteenth century, and the subsequent civilizational conversion of Muslims (and shaping of shari'a) in the colonies of the nineteenth century studied in the following chapter.

THE EARTHLY LAWS' HARSHNESS

Augustine's eternal law (*lex aeterna*) is the instantiation of both divine will and divine reason, providing order to the universe and irrigating the soul through both revelation and natural law (*lex naturae*).⁴ When the law of God is discovered within the *internus aeternus*, particularly through contemplation, it can help Christians live the good life. While sin is a violation of the natural order preserved by the eternal law, there is no organic link between the latter and positive laws regulating earthly life.

Augustine nevertheless had to grapple with positive laws in his duties as a bishop involved in the public life of the Roman Empire. One case, in the midst of the Donatist controversy, sheds light on Augustine's views on the actual laws of the empire. In 412 CE, following the conviction of some Donatists for the murder and mutilation of two Catholic priests, Augustine, who was aligned with the Catholic Church in its opposition to Donatism, wrote to Apringius, the proconsul of Africa, asking for mercy.

In Augustine's correspondence, the law organizing collective life in the empire does not have an ethical value in itself, and is not organically tied to or reflecting the teachings of Christianity. Rather, the law, associated with the City of Man and its government, is a necessity for the preservation of public order. The implementation of the law, as a manifestation of systematic and necessary violence, is not devoid of ethical consequences, but these are part of a very minimalist and negative ethics that can only contribute to deter individuals from doing evil deeds. By contrast, doing the good and being good as the path toward ethical fulfillment require love and justice, whose absence is intrinsic to the law. For Augustine,

All this does not mean that institutionalized force has no point—the might of the emperor, the judge's power of the sword, the executioner's hooks, the soldier's weapons, the correction a master gives his slave, and even the strictness of a good father. . . . They inspire fear and thus put a check on the bad, so that the good may live peacefully among the bad. The latter are not to be described as good just because they do not sin, out of fear of such penalties. One is good not through fear of punishment, but through the love of justice.⁵

As in *The Confessions*, Augustine refers to the possibility for a human being to be good only to the extent that he can “participate in divine grace,” as “he cannot acquire [goodness] from himself.”⁶ Divine heteronomy can lead the inner self to the path to goodness and requires inner exploration and introspection. While divine grace and the law are both heteronomous, divine heteronomy, given its ethical nature and its privileged access to and ability to shape the inner self, is clearly distinct from positive law, which remains alien to the inner self.

Yet because the law, is, at its core, the power to inflict punishment, and to hold the power of life and death over humans, its implementation cannot leave the people of God indifferent. The Church’s representatives have a duty to intercede in favor of those found guilty by a court of law, and should ask judges and rulers for mercy.⁷ While the role of earthly power is to instill fear among humans through the manifestation of violence against those transgressing the law, the Christian message is mercy. Intercession, unlike the judge’s power, is not coercive, and while it can claim ecclesiastical authority (“I warn you as a bishop to a Christian”), the latter is based on exhortation, advice, and arguments about the Christian message and appeals to the Christian faith of the judge (“If I were speaking to a judge who was not a Christian, I would put it differently.”)⁸

The ethical discussion on the basis of Christian teachings does not entail the revision of the law to make it less harsh, as if the law was inherently merciless. Rather, for Augustine, the ethical intervention of the Church takes place once judgment has been pronounced and guilt has been established. Because sin and repentance are central to the Christian message, the power of the sword, leading to the criminal’s death, leaves no chance for him to repent. Sparing the life of the criminal gives him a chance “to correct his vices,” improve ethically, and is an opportunity to save a soul.⁹

Augustine’s views on the law are informed by the narrative contrasting the legalistic Old Testament focusing on punishment (“a harsher legal code of retribution”)¹⁰ with the New Testament’s message of forgiveness and love. Augustine is also differentiating between, on the one hand, the City of Man unable to achieve justice through law (civil laws may perpetuate injustice, as in the case of property), and, on the other hand, the City of God, where justice is fulfilled.¹¹ When Augustine mentions “divine law,” he does not refer to the juridical dimension of the law but rather to love as the basis of the self’s relation to God and other humans. But there is no organic link between this “law” of love (describing its object and its intensity) and earthly laws regulating the life of human communities, even under Christian faith.¹²

SUSPENDING THE LAW

The potential contradiction between law and love is exemplified in the famous juridical case involving the Pharisees and Jesus, as narrated by Augustine. Rather

than being confined in the choice opposing the subversion of law to its application (and hypocrisy), Jesus decides to suspend the application of the law by appealing to the inner conscience of the representatives of the law.

Underpinning Augustine's views on law is the asymmetric power to judge others in a tribunal and its unequal distribution among sinners in earthly life, as the judge's knowledge of his own sins does not translate into worldly punishment. In comparison to the perfection of divine justice, human justice is inherently imperfect, since those who speak on behalf of the law have themselves been violating the law. Before exercising power over life and death, a judge should question his inner self and understand the implications of his own propensity to commit sins, so as to realize that the enforcement of the law and its punishments require mercy.

The law itself, in Augustine's account, can be divorced from truth and goodness. In the juridical case involving the Pharisees, true knowledge does not come from technical knowledge of the law. Sticking to the law obscures sight and judgment, as the law can literally make its representative blind, unable to have faith and to see the truth that Jesus was conveying, while the people who "enjoyed his speeches" and "did not know the Law but believed in the author of the Law, have been enlightened."¹³

For Augustine, unlike Aquinas and the canonists and scholastics of the High and Late Middle Ages, the law regulating collective life is not the main site of truth and the good. In Augustine's time, "the law" referred mainly to the imperial law of Rome. Augustine was himself trained in Roman law and adjudicated disputes as Bishop of Hippo. Yet there is no organic link between Augustine's exploration of the inner self and the existing laws in earthly life, but rather a tension between the law regulating order in the City of Man, and the perfect peace and justice of the City of God. Law in worldly life is a necessity but is not, in itself, the path to goodness and proximity to God. Rather, access to the higher truth and goodness entails a withdrawal into the inner self: "Divine things are the more clearly manifested to him who withdraws into the recesses of his heart."¹⁴ One could say that, because the law (as it exists in human life) regulates external things, it is heuristically and ethically devalued when compared to the ethical truth of inwardness: "Do not go outward; return within yourself. In the inward person dwells truth."¹⁵

Augustine's focus on inwardness rather than on any form of (positive) law as a path to truth and goodness does not mean that Catholic teachings were ignored by Roman legislation. The codification of legislation initiated by Theodosius II (the work of the commission tasked to compile Roman legislation since Constantine, begun when Augustine was still alive) includes chapters dealing with Catholic faith and ecclesiastical norms. The subsequent Justinian Code, building on the Theodosian Code along with the Gregorian and the Hermogenian Codes and other relevant imperial legislation, devotes the first chapters of its Codex also to the public truth of Catholicism and matters concerning the clergy, the Church's property, the status of Jews, heretics, pagans, and apostates.

However, the reference to Catholic norms in imperial codes of the fifth and sixth centuries, unlike the language of canon law in the twelfth century, is authoritative as law because it is enacted by the emperor under the prestige of his name. Under Roman emperors, even those who converted to Christianity, the main rationale of the law is the ability of the imperial center to maintain its rule over subjected populations and territories as stated in the Code of Justinian: "The maintenance of the integrity of the government depends upon two things, namely, the force of arms and the observance of the laws, and for this reason, the fortunate race of the Romans obtained power and precedence over all other nations in former times."¹⁶ From the twelfth century onward, ecclesiastical norms in Latin Christianity are authoritative not because they are enunciated by the emperor or the king but because they are decreed by the Church, and it was the literal "canonization" of Roman law (studied by the newly established schools of jurists in Italy, particularly in Bologna in the twelfth century) that gave the latter a renewed relevance under the overall authority of the pope.

PASTORAL CARE

The knowledge of inner selves in Christian teachings, exemplified by Augustine's writings, informed the exercise of spiritual power prescribed by Pope Gregory the Great at the end of the sixth century.¹⁷ *Pastoral Care* (*Cura Pastoralis*), also known as the *Book of Pastoral Rule* (*Liber Regulae Pastoralis*), offers a casuistry of status and inner dispositions enabling the pastor to individualize standardized admonitions and address each person according to his social rank and moral character. Distinct from the language of Roman law and canons, this reflects the development of a non-judicial form of power based on care.

With Gregory the Great the knowledge of law is a knowledge of the "Sacred Law," equated with the Gospels and at the service of pastoral care. It is an invitation to meditate on the "Sacred Word" and to reflect on what the commitment to "celestial life" entails in worldly life. The knowledge of stories narrated in the Gospels can equip the pastor with the language of admonition. Yet the knowledge of law is not an end itself but should inform the higher task of knowing and taking care of souls.¹⁸

Gregory addresses mainly those in charge of spiritual authority, understood as the "government of souls," which is itself defined as "the art of arts." Gregory deplores that many believe they are entitled to speak about souls when, in fact, this is a distinct sphere of knowledge with its own experts, "the physicians of the heart" who can speak authoritatively about it, the same way medical science is the exclusive realm of "physicians of the flesh."¹⁹ This is a reference to both power and knowledge, the twin metaphors of government and medicine, by which the power over souls is enabled by the knowledge of souls. Power is not an end in itself, as

there is a promise of care and cure in exchange for submission. On the other hand, the office's holder cannot treat souls' illnesses without commanding them, as cure requires obedience.

The relation between inner self and outer deeds is a central tenet of spiritual government and determines who is qualified to hold "the office of pastoral care." The pastor, a man expected to lead by example, should not be caught in "external matters" diverting him from the knowledge of his own self and from self-examination.²⁰ A man enjoying supreme rule and "the subjection of others in the hidden reveries of his thought" will often claim that he is only interested in doing good works. He may not be self-conscious of his own true motives for desiring to govern souls because he lacks self-knowledge and is unable to speak truth to himself.²¹

It cannot be presumed that those in charge of spiritual rule are acting ethically. External deeds do not have an intrinsic moral value. The ethical judgment of deeds, particularly of those claiming they are motivated by duty and spiritual motives, cannot be done only on the basis of recognition by the community's members. This appreciation may be misleading, as those witnessing deeds that are "externally" good lack access to inner selves. The ethical assessment of deeds requires knowledge of intents and inner dispositions that are accessible fully only to God.²²

However, if pastors are expected to cultivate abnegation and devotion to God, this should not be at the expense of their authority over subjects. The balance between inner subjection to God and social projection of power is central for the pastors' ability to govern souls and preserve spiritual and social order. Pastors are requested to succeed in a complex, potentially contradictory exercise, cultivating an inner state of humility and yet inhabiting a position of authority with its outward and visible signs, expressions, and manifestations. Pastoral power should be exercised with external signs of humility that could be emulated by subjects without undermining the ability to instill reverence and fear among them ("Superiors, then, should ceaselessly take care that the greater the external manifestation of power, the more is it to be kept in subjection internally").²³

As men of God, the pastors' vocation is not eremitical. They are not expected to withdraw from the world and to put an end to social interactions, or to confine themselves to their inner self to dedicate themselves to divine truth. Rather, their duty is to sustain continuous relations of care and power with their subjects. Hence, spiritual power, to be effective, needs to develop a knowledge of its object, namely the souls of those who are administered by the Church, and potentially all human souls. This knowledge of the subjects' selves starts with a knowledge of the pastor's own inner self to assess his own readiness and qualifications for spiritual government which also offers a prism, through the relation between interiority and external deeds, for understanding other selves.²⁴

The Church's spiritual government is predicated upon a jurisprudence of the selves entailing, on the one hand, a standardization of admonitory speech derived

from the Gospels and authoritative Christian sources, and, on the other hand, an individualization of speech addressing each subject on the basis of the pastor's assessment of his social status and moral character ("the discourse of a teacher should be adapted to the character of the hearers, so as to be suited to the individual in his respective needs and yet never deviate from the art of general edification.")²⁵ *Pastoral Care* offers a middle way linking standardization with individualization through a typology of addressees based on dual distinctions and oppositions based on sex (man/woman), age (young/old), legal and economic status (slaves/masters, poor/rich), and moral character (impatient/patient, humble/haughty, abstemious/gluttonous, sowers of discord/peacemakers).

The pastor's intervention should push each self to its own limits and shed light on its own weaknesses. There should be a certain equity in the distribution of pastoral speech, not disrupting social status but rather to preserve the social order and its hierarchies while reminding all and everyone that worldly life remains subjugated to celestial life and its guiding principles. Hence, the fundamental distinction between rulers and subjects should inform the enunciation of pastoral speech to ensure that social and psychological conditions for its effective reception by addressees are fulfilled while maintaining assigned roles, tasks, and duties.

LAW AND CANON

If the development and preeminence of canon law can be situated in the High Middle Ages (mainly following the twelfth century), it is also preceded and informed by a conceptual and institutional history of the "canon" and its relation to law. *Etymologies* by Isidore of Seville, considered to be one of the most influential books in the Latin Middle Ages, differentiates clearly between law and canon, to which the author devotes distinct books.²⁶ Law (*lex*), unlike custom (also called "unwritten law"), is a written statute and can be read (*legere*). While Isidore mentions the difference between divine law (based on nature and immutable) and human law (based on customs and varying with different peoples), the notion of law developed by Isidore is exclusively human and includes civil law (*ius civile*), the law of nations (*ius gentium*), and military law (*ius militare*). Isidore also distinguishes between public law (*ius publicum*) dealing with "sacred things, priests and magistrates" and private law (*privatae leges*) concerning individuals.

In book VI of *Etymologies*, dedicated to "Books and Ecclesiastical Offices," Isidore, after mentioning the "canon-tables" of the Gospels (in reference to a system identifying concordant and shared passages in the Gospels), defines "canon" as the "measuring rod" (*regula*) drawing "in a straight line" (*recte*) and that "never goes astray." Isidore adds that canon may also rule (*regere*), refer to "a norm of living correctly (*recte*)" and can "correct (*corrigere*) anything distorted or wicked."

When dealing with the authoritative norms regulating the life of the Church and Christians, Isidore connects these explicitly to the ecclesiastical assemblies projecting normative power, the “canons of Councils (*De canonibus Conciliorum*),” rather than using “canon” as a stand-alone word. For Isidore, the first formulation of the “canons of Councils” can be dated back to the Council of Nicaea at the time of Constantine’s imperial rule. Before Constantine, because of persecution, “there was no freedom [for bishops] to assemble as a unity,” to enunciate the true creed and denounce heresies.

As displayed in the First Council of Nicaea in 325, the universalist normative power of the Church originated as a prescriptive collective power of the assembly of bishops dealing with beliefs and discipline. Convoked by Emperor Constantine to settle Church disputes, the Council of Nicaea was instituted as the supreme authority whose “canons” were expected to enable uniformity of beliefs and practices and a clear delimitation of the boundary between those belonging to the community and the outsiders.

The first decision of the Council of Nicaea was “the profession of faith” declaring that Jesus Christ “is from the substance of the Father, God from God” (*homoousion*), whose full divinity cannot be a matter of doubt. Those claiming that Jesus was created and made from another substance (*ousias*) were declared heretics and excommunicated. The canons of the Council enunciate prescriptions and proscriptions regarding baptism, procedures of appointment of the highest authority of the province (monarchical episcopate), role of synods in overseeing excommunication and reintegration in the Church, procedures of penitence, ordination, hierarchy of offices, and preeminence of canon over custom.

FORUM INTERNUM AND FORUM EXTERNUM

In the High Middle Ages, particularly following the twelfth century, profound changes instituted a new relation between law and inner self in Western Christianity. The institution of the private yearly confession was a major change reflecting the concurrent development of legal knowledge and canon law as a normative system to rule and organize collective and individual life (notably the regulation of souls and inner selves), coupled with an unprecedented expansion of the Church’s institutional and jurisdictional power under papal authority that has been described as a “papal revolution.”²⁷

The category of *jus canonicum* in reference to ecclesiastical legislation appears for the first time in the eleventh century, while the notion of *jus novum*, encompassing the new rules enunciated by the Church under papal authority, is contrasted with the *jus antiquum* that includes the older canons. The development of (canon) law with its categories, jurists, and schools is constitutive of the expanding Church power fulfilling, and informed by, a “new sense of progression in time”²⁸

and a new belief in the ability to reform the earthly world as a path to the afterlife. It is also in the eleventh century that the older notion of purgatory acquired renewed significance; in purgatory, souls are subject to temporal punishment for the expiation of sins committed in earthly life, in conjunction with the original sin absolved through baptism. It is with this new understanding of sin requiring temporal suffering and punishment but also the possibility of absolution in worldly life that priests' authority is displayed in the performative power absolving the sinner ("I absolve you").

In the thirteenth century, scholars of canon law relied increasingly on the distinction between *forum internum* and *forum externum*.²⁹ Both *fora* were under the normative purview of canon law and under the bishop's overall authority, assisted by a confessor general. The *forum internum*, also known as *forum conscientiae*, was not restricted to inner dispositions. The *forum internum* put more emphasis on conscience and contrition as part of the penitential process, in theory voluntarily initiated by the penitent and covering all deeds that could be qualified as venial and mortal sins. The *forum externum* involved a judicial process and was dedicated to manifest transgressions of the Church's law and offenses against the Church, often punishable by excommunication before an ecclesiastical court. Sins heard in confession were under the seal of secrecy, except for manifest crimes that were already in the public domain adjudicated by ecclesiastical or temporal courts.

The Fourth Lateran Council (1215) marked a significant shift in the administration of pastoral care, as it provided a canonical basis for the expansion of the spiritual government's institutional power over individual selves, as much as it reflected it. It gave canonical status to the practice of yearly confession that was already relied on in several localities. The practice was rendered mandatory and the bond between the parish priest and the individual member of each community under his purview was strengthened. Echoing Gregory the Great's *Pastoral Care* and the language of penitential manuals, Canon 21 referred to the priest's role as a physician of the self, putting the life, deeds, and character of the individual under close scrutiny: "Carefully inquiring into the circumstances of the sinner and the sin, from the nature of which he may understand what kind of advice to give and what remedy to apply, making use of different experiments to heal the sick one."³⁰ Canonical legislation provided a strict protection of secrecy under the seal of the confessional and sanctioned priests who contravened the rule.

The canonization of confession as a practice of caring for the soul and the stringent rules of secrecy laid the ground for a shared intimacy between penitent and priest, by which the self keeps no secret from the Church. The inner self is not accessible to others, but the only person who is able to know the deepest secrets of the self that she, in certain cases, may not even be able to disclose to herself, is the confessor. The priest shares with God, and on His behalf, a privileged access to the penitent's inner life, with the latter's consent and verbal expression of the darkest

deeds and thoughts. Confession entailed procedures to be followed by priests to ensure a proper care of souls, including assessment of the penitent's knowledge of creed and articles of faith and his willingness to repent and readiness to undertake penance. The priest, on the basis of the penitent's detailed account of sins, and, depending on their gravity (venial or mortal), would assign a specific penance.

In early Christianity until Carolingian rule, the dominant ecclesiastical intervention for the laity in relation to sins was public penance, which was a burdensome practice that could require several years to complete. Penitents would usually have it once, on their deathbed. Under Carolingian rule,³¹ earlier practices of tariffed penance initially introduced by Irish monks became widespread, and coexisted with public penance for the most serious sins expected to elicit shame. Penitential guidebooks offered a gradation of sins and a distribution of corresponding tariffs that could be handled over time and allow for repeatable and repeatably pardoned offenses. Influential Carolingian churchmen such as Alcuin would relate pastoral care to confession in the intimate space of secrecy and conscience under divine gaze,³² and would insist on its inner, contritional, and repetitive nature. Burchard of Worms's *Decretum* included one of the most influential "Libri Poenitentiales" of the eleventh century with its detailed catalog of sins and corresponding penances at a time where contrition and inner dispositions were becoming increasingly central in the penitential process. Burchard invites priests to correct bodies and heal souls (*Corrector sive Medicus*), and with the help of a detailed questionnaire, encourages them to assess the penitent with a thick description of the sinner's deeds and his status (free or slave), a qualification of the sin (pagan beliefs and practices, adultery, theft, homicide, parricide, fratricide, and so on) and its circumstances (at war, in a Church, in a house).

The increased emphasis on inner states did not mean less power of the Church over selves. Rather, while interest in the inward dimension of penance had existed for centuries among Christian scholars and clergymen, it later informed the practice of private confession that was legalized and supervised by the Church, enabling a more sophisticated individualization of spiritual government and greater control over inner selves and outer deeds. Before the institution of confession by papal authorities, it was external penance that was directly regulated by ecclesiastical authorities. With the Fourth Lateran Council, the inner self and the individual's conscience became formally subjected to the sacramental power of the Church. The individual's conscience became a space shared between the self, God, and the priest. The priest, given the sacrament's central role in the care of the soul (*cura animarum*) authorized by canon law, had a privileged access to the individual's thoughts and states, was empowered to examine the penitent's conscience, and had the authority to absolve the sinner.

Concerning True and False Penance, a tract of the eleventh century and an important reference in later theological and legal manuals, is an example of the

judicialization of penance and its new association with punishment, as well as an indication of the powers ascribed to the ecclesiastical judge in assessing the inner self and his ability to know the sinner's deepest thoughts and motives better than himself: "Therefore the diligent inquisitor, the subtle investigator, wisely and almost cunningly interrogates the sinner about that which the sinner perhaps does not himself know, or because of shame will wish to hide."³³

Assessing the gravity of sins required not only manifest acts but also an examination of the inner self, her motivations and character which, even if these were fully known only by God, were nevertheless unveiled by the examiners. This dual inquiry into outer deeds and inner self mirrored the relation, for several categories of acts, between crime and sin in canon law, that is between on the one hand "legal guilt" associated with the notion of *culpa* in Roman law, and, on the other hand, "legal sinfulness" qualified by a new term, *contemptus*, in reference to "pride or exaltation of the self," understood as the origin of the "contemptuous defiance of God's law."³⁴

In modern times, the distinction between *forum internum* and *forum externum* has been used in Western philosophy in relation to knowledge and subjectivity (Descartes, Rorty), law and ethics (Hobbes, Kant), and more recently in legal discussions about freedom of religion and conscience and authorized manifestations of religious beliefs in the public sphere (article 9 of the European Convention of Human Rights, discussed in chapter 14). However, if, in the twentieth century, the *forum internum* is used metaphorically in reference to individual freedoms and to the private sphere's autonomy under the individual subject's sovereignty, it was understood literally in medieval Christianity. The *forum internum*, the "internal court," was initially the jurisdictional domain of the priest because, as a confessor and judge, it was under his sacramental jurisdiction that sins were qualified and their corresponding penances (including fines and corporal punishments) decided, with the looming threat of minor excommunication excluding the sinner from the Eucharist and other sacraments. The *forum internum* was also called *forum conscientiae*, in reference to the work of contrition involving inner states, thoughts, and emotions required from the penitent in relation to its "external" deeds, including verbal expressions performed for penance. Within the overall jurisdiction of the Church, the distinction between *forum internum* and *forum externum* could also be understood as the supreme limit between, on the one hand, penitents whose submission to the Church's authority reinforced its jurisdiction over souls and bodies as their sins and deeds were judged within the Christian community, and, on the other hand, sinners who defied the Church's authority by refusing, for example, to appear before the ecclesiastical court. Hence, far from prefiguring the freedom of conscience, the distinction between *forum internum* and *forum externum* was initially a legal category reinforcing ecclesiastical power over inner selves.

DEVELOPMENT OF CANON LAW

As the most widely used canon law book of Western Christianity from the twelfth century onward, including among theologians and poets (Aquinas and Dante), Gratian's *Decretum*, also entitled the *Harmony of Discordant Canons* (*Concordia discordantium canonum*), is an indication of the rise of canon law both as a juridical system and as a mode of thought in Europe.³⁵ At a time of development of legal science in Italy, particularly in Bologna, and of projection of papal authority, Gratian's *Decretum* offered an unprecedented synthesis and standardization of canon law (including the Decalogue, Scripture, the writings of the fathers, papal letters and decretals and enactments of councils and synods, and penitential manuals)³⁶ to be relied on by both ecclesiastical and civil authorities to rule Christian territories and regulate the life of individuals and communities in Europe.

In his comments on the different categories of law, Gratian relies heavily on Isidore's *Etymologies* and underlines the centrality of written enactments (or ordinances) in the constitution of human law. While ordinances can be determined by reason, they remain subjugated to the higher aim of salvation.³⁷ However, while scholarship of the seventh century, exemplified by *Etymologies*, clearly differentiates between law and canon, Gratian subsumes Isidore's distinctions under the category of law under the general form of ordinance to include both civil law and canon law ("an enactment is either civil or ecclesiastical")³⁸ that are both structured around prescription and proscription.³⁹ Legal enactments, either civil or ecclesiastical, "check human temerity and the capacity to harm," share formal characteristics (justice, practicality, suitability, clarity), and come into effect when they are instituted (promulgated by the legislative authority).⁴⁰

While Gratian mentioned the ethical dimension of civil laws, ecclesiastical laws have a more pronounced ethical substance: "Canon is called a rule because it leads one aright and never takes one astray . . . it rules, presents a norm for living rightly, or sets aright what is twisted or bent."⁴¹ However, the most important distinctive feature of ecclesiastical laws is their authorship: "Some canons are decrees of pontiffs, others are statutes of councils. Some councils are universal, others provincial."⁴² While canon is often used by Gratian as a synonym for ecclesiastical law, he is also making a distinction between canons formulated by a general council, decrees enunciated by the pope in consultation with his cardinals, and decretal letters (papal responses to individuals' queries). Canons can be differentiated according to their object, including dogmas (a teaching of the Christian faith), mandates (a teaching of conduct), interdicts, and sanctions.

Civil and canon laws, both formulated by humans, do not have the same value nor the same rank in the hierarchy of laws as determined by their relation to natu-

ral law. Natural law, which includes both “the Law” (in reference to the Old Testament) and the Gospel, is associated with morality (“whatever is moral is included in the term . . . ‘natural ordinances’”), also defined as “divine ordinance.”⁴³ Natural law is preeminent over all other forms of laws because of its origin, “age” and “dignity,” and its immutability. In response to the objection according to which there is a discordance between, on the one hand, some prescriptions and proscriptions of the Old Testament and the New Testament and, on the other hand, ecclesiastical and civil rules expected to regulate similar matters, Gratian writes that while natural law is “contained in the Law and the Gospel,” “not everything contained in the Law and the Gospel pertains to natural law.”

Gratian’s *Decretum* fully acknowledges imperial and royal powers in regulating the life of the communities as long as they clearly reflect and submit to natural law.⁴⁴ Ecclesiastical legislation, too, is clearly below natural law transmitted in the Scriptures of the Old and New Testament. Yet, in the hierarchy of laws, civil enactments do not have the same rank and value as ecclesiastical enactments, as the former are clearly subordinate to the latter. Hence, “imperial ordinance may not abrogate ecclesiastical laws,” “the emperor is not allowed to do anything opposed to evangelical . . . or apostolic norms,” and civil legislation “may not contradict . . . the decrees of the Roman pontiffs.”⁴⁵

The hierarchy of laws in the *Decretum* enables and is enabled by the shared form of different types of laws. While in the seventh century law and canon were clearly distinct (as in Isidore’s *Etymologies*), in the twelfth century they belong to the same conceptual category defined by the generality of the law encompassing “species” of law. While canon and civil law can claim clearly distinct authorships, their domains overlap. It is because they have shared areas of intervention that a hierarchy defines which one should be preeminent in situations where conflicts of prerogatives arise. Both regulate the life of individuals and communities, but canon law is higher in the hierarchy of rules not only because it can translate natural (or divine) law into human legislation, but also because it is the only one that deals with souls and their salvation, and at the same time grounds the immateriality of the soul in the materiality of things, practices, and institutions. From this perspective, law in Western Christianity is a unique translator and vehicle of immateriality into materiality, giving shape to tangible and material realities in time and space while subjugating them to the immaterial.

While the *Decretum* is reflecting the process of “canonization” of Roman law, it is also a manifestation of the “legalization” of canon. With this double transformation, the science of canon law became the main knowledge (and Gratian’s *Decretum* the main treaty) to be mastered by anyone belonging to civil and ecclesiastical authorities and involved in the government of individuals and communities in Western Christianity.

THE TWO POWERS AND THE LAW

The constitution of the *forum internum* instituted as a shared space of consciousness between priest and penitent is the spiritual infrastructure holding the general architecture of the Christian polity under papal authority regulated by canon law. The expansion of papal power was itself couched in the language of law and took shape in the development of juridical power. The constitution of a body of authoritative canonical law in the thirteenth century is exemplified by the *Corpus iuris canonici* which included, besides the collection of authorities compiled by Gratian in his *Decretum*, the rulings and canons promulgated by the popes, notably Gregory IX, Boniface VIII, and Clement V.⁴⁶

The critique of papal authority and polemics about the respective powers of popes and princes was a juridical battle using the common language and grammar of the Christian episteme. As a defining moment in the relation between Church and worldly power, the conflict over who is authorized to invest and install bishops and abbots in their episcopal office triggered the Investiture Controversy and drew new limits between the territory of *regalia* and the domain of *spiritualia*. In his *Dictatus papae*, Gregory VII reasserted with force the pope's exercise of canonical legislative power, claim to universal authority, and power to depose emperors.

As in Christian representations of power in the Late Middle Ages, coercive power in John of Salisbury's *Policraticus*, written a few decades after the Investiture Controversy, is exercised legitimately by the prince because he has been delegated to do so by the papal spiritual authority. The prince is "a sort of minister of the priests," and yet inferior to them. He has been handed by the Church "the sword" of power to physically punish crimes, tasks that are part of the "duties of sacred law"⁴⁷ yet, because of their indignity, should never be performed by priests.

Following Moses's instructions in the Book of Deuteronomy quoted by Salisbury, the prince is expected to have an intimate knowledge of the law and to own it ("he will sit upon the throne of the kingdom and he will write for himself a copy of this law of Deuteronomy in a book"), through a daily exercise which is intellectual ("he shall read therein all the days of his life"), moral ("that he may learn to fear the Lord his God") and material ("to keep all His words and ceremonies which are prescribed by the law.")⁴⁸ This constant and continuous labor with the letter of the law should shape the prince's inner self and dispositions and enable him to reach and reflect on its spirit: "The law of Deuteronomy, that is, the second law, is therefore to be written in the book of his heart so that the first law, which is impressed upon the page, corresponds to the second, which is recognized by the mystical intellect."⁴⁹

Salisbury refers to the general concept of law, usually as synonym of divine law and as the actualization of justice and equity. He nevertheless differentiates between different forms of laws under the overall normative authority of divine

law, which is the foundational truth. In this hierarchy of laws, canons should be at the image of divine law. Ecclesiastical legislation provides normative guidance to which princely regulations should submit through “imitation of the sacred canons.”⁵⁰

The relation between inner dispositions and outer deeds mediated by the knowledge of and submission to the law is of the outmost importance when governing the community, as it is what differentiates the prince from a tyrant. The latter is a usurper who is not honoring the responsibility of lawful power, as he is ruling the community following his will, and subjugating the laws to his will. In contrast, the prince serves the “will of the law” and not his own will, at the service of the community, putting collective welfare above his individual interest, so “that everyone is member of the others.”⁵¹

THE LAW AND THE GOOD

The development and primacy of canon law enunciated by the Church did not occur in substitution of the prevailing normative sources but enabled a new normative architecture recognizing the multiplicity of juridical regimes, notably those inherited from Roman legislation and in relation to the concomitant production of rules by the *regalia*. In that regard, Aquinas’s thought offers an overall theological coherence to the plurality of laws (and their imbrication), mirroring the cosmic order, and through which the good, mediated by the Church, shapes inner selves and outer deeds, and regulates the order of the world.⁵²

For Aquinas, the subjugation of man to the law is in itself good, for “the virtue of anything that is subject is to be fully subordinate to that by which it is governed.”⁵³ The law makes people good because it is in itself the site of the good. If humanity is caught in the external conflict between good and evil, the best way to make themselves good is to submit to “God Who instructs through law and helps us through grace,” understood as an “extrinsic principle.”⁵⁴ Derived from Divine Will, the end of the law is “the common good.” A bad law would be an oxymoron for Aquinas, and only a perversion of law.

There are different kinds of external law related to each other in a hierarchical way. First, there is the “eternal law” that rules the whole universe and is not accessible to humans, but only to God Himself. Second, the unchangeable “natural law” allows humanity to participate in the eternal law and is tied to the rational capacity to have an end and act toward it. Through natural law, “the divine light” allows people to distinguish between good and evil. Third, the changeable human law is produced by practical reason which legislates not on “universal” matters (the business of natural law), but only regarding “particular” ones.

The order of the world is consistently regulated by the different laws because they all participate in, and derived from, the foundational eternal law⁵⁵ which

leaves on humanity “an imprinting” that orients our acts and ends. This order is consistent with an ontological conception of truth located in the eternal law, for any true knowledge is an “irradiation” (or “participation”) of the foundational and yet inaccessible “exemplar.” Human law is good only to the extent that it is participating in and reflecting the eternal law, for its goodness comes necessarily from the eternal law. Quoting Augustine, Aquinas writes: “In temporal law there is nothing just or lawful except what men have derived for themselves from the eternal Law.”⁵⁶

To the three kinds of law, Aquinas adds the “divine law,” which allows man to be guided in his “supernatural” ends with certainty and to participate in the eternal law “in a higher manner.” Moreover, human law deals only with external matters, and is unable to regulate the inner self. It is the task of the divine law to regulate the interiority of the believer and order her inner acts: “Man can only make a law about those things which he is able to judge. Now, man cannot judge about interior acts which are hidden but only exterior movements which are visible, and, yet, for the perfection of virtue man is required to act rightly in both kinds of acts.”⁵⁷ Aquinas refers here to the New Testament (the “New Law”) addressing the soul, as opposed to the Old Testament (the “Old Law”) directed at material and exterior things.

The law enables the virtuous transformation of its subjects. Aquinas, like other Christian theologians, believes in the shaping power of the law. However, the law does not automatically and instantaneously change people for the better, for this is a transformation that can occur only over time. Quoting Aristotle on ethics, Aquinas writes: “Lawgivers, by habituating men to good acts, make men good.” Although obeying a law out of fear of punishment is not virtuous, it may progressively change a man until he obeys the law willingly and enjoys this submission. People have “a natural aptitude for virtue,” but they need “a training” to fully develop this ethical potential and make it “an internal habit or disposition,”⁵⁸ notably through the fear of punishment.

This ability of the law to transform is called by Aquinas “the effects of the law.” Those who are already virtuous do not need the human law, and the latter is not coercive for them, for they willingly submit to the natural law. Moreover, the human law encounters the natural law (which participates itself in the eternal law), already inscribed in the heart of the good person. Since the virtuous are only a few in the community, the coercive human law is formulated for the great majority of the people and addresses the most serious vices.

All laws, except human law, are necessarily just. The condition for a human-positive law to be just is “to have the power of binding in conscience (*conscientiae*), a power which comes from the Eternal Law from which they are derived, Prov. Viii, 5, ‘Through me kings rule and the framers of laws decree what is just.’”⁵⁹ Unjust laws, like the ones formulated by tyrants and idolaters, do not bind in con-

science, for they are acts of violence against divine law. To be just, human laws need to be formulated by a lawgiver who does not exceed his power, and be directed at the common good, as well as preserving the proportionality of burden and loss between the different parts of the whole community.

LAW AND COERCION

From the eleventh century to the fourteenth century, Europe witnessed numerous crises and conflicts between the papacy and Christian princes over the twin powers' hierarchy, legality, and legitimacy couched in the language of canon law. These conflicts over imperial claims of representation, embodiment, and limits of "universalist" power were also consequential regarding the status, authority, and scope of canon law in its relation to micro-forms of pastoral power over the souls analyzed above. While those micro-institutional powers continued to regulate the spiritual economy in Christian Europe, they were subjected to the pope and temporal princes' competing authorities and claims, notably over the issue of appointment of clerics. The High and Late Middle Ages witnessed a considerable expansion of papal institutional power, through papal legislation and litigation in papal courts. As an indication of this expansion, the annual papal letters, which were still very limited in the early eleventh century (no more than ten letters per year) became a systematic means of ecclesiastical bureaucratic government in the first quarter of the fourteenth century (3646 letters per year under John XXII).⁶⁰

It was against this expansion of Church power under papal authority that Marsilius of Padua wrote *Defensor pacis*, reflecting the legal and institutional practices of his time, notably the scope of the Church's law but also the centrality of law as a general concept mobilized in attempts to reconfigure new arrangements between Church and state. While Marsilius's typology of the law's meanings differentiates between four definitions, he refers to the law proper to the extent that it is entwined with coercion. Although it is also expected that the law should reflect and ensure justice, just norms cannot acquire the quality of law if they are not enforced, while mere expression of coercive sovereign power, regardless of justness, is deemed law.⁶¹

In addition to his typology of legal meanings, Marsilius's distinction between "immanent" acts (thoughts and affections) usually attached to the inner self and not involving inter-subjective interactions ("they do not cross over into a subject other than the one producing them"),⁶² and transitive acts entailing "all movements produced by some exterior organ of the body" that can potentially harm or injury another person, informs the scope and space covered by human law with its coercive force, punishments, and penalties. This differentiation between significations of law and acts underpins Marsilius's qualification of the Gospel's normative prescriptions as mere teachings and admonitions about how to achieve happiness

in relation to “the eternal life” should never be enforced. If Marsilius refers to the “divine law” equated with the “evangelical law” and the “law of grace” in relation to its non-juridical acceptance mentioned in his typology, it is precisely to dismiss the use of the word “law” as it lacks the “coercive standard” when it comes to its relevance and application in “this present world.” Unlike the Mosaic law, which primarily regulated human deeds in this world as a source of expiation, the foundational bivalence of the evangelical law, both as a set of counsels for the present world and as a law for the other world, offers, through the sacraments, grace to humans, enabling their redemption from guilt following Christ’s death.

Hence priests, as representatives of the Church and “ministers of the sacraments,” should never hold any coercive power related to judgeship, as they are not authorized to act as judges and utter judgments on behalf of the evangelical law in this world. Their role is limited to teaching the law’s prescriptions regarding beliefs and behavior relevant for the other world, and giving admonitions and counsels for the care of the soul’s blessedness and health.⁶³

In contrast to the scholars and jurists of his time working within the framework of the Gratian’s *Decretum* under the overall authority of canon law that became the dominant legal language from the eleventh and twelfth century, Marsilius does not recognize the canon as law proper and never mentions “canon law,” but refers only to the canon as the foundational scripture mobilized in the *Defensor Pacis*’s Second Discourse and as a source of religious truth and authority consistent with the treaty’s main theses. In the hierarchy of norms described in Gratian’s *Decretum*, papal decretals and the decrees of the college of cardinals, as an expression of the continuity of the Church’s legislation, were considered an integral part of canon law. Yet, for Marsilius, the Church’s legislation produced by the pope and the affiliated clergy does not reach the status of canon and its attached certainty.⁶⁴

The duality of laws emanating from Church and prince and reflecting the duality of ecclesiastical and temporal power is not acceptable for Marsilius. Prefiguring Hobbes and Rousseau, the political community’s unity is shaped by and through the law whose formulation is authorized by the “citizen-body” (also called the “universal body of citizens”) acting as the source of both legitimacy and legality. Their mandate is to elect the ruler, as was the case with the Holy Roman Emperor, elected by the prince-electors and Italian city-states at the time of Marsilius. This body’s role is also to delegate power and pass laws. As the foundational mechanism of authority, elections allow for the participation of the “multitude” acting as a “whole,” whose judgment is more reliable than when decisions are between the hands of one individual or just a few. In this configuration, norms and punishments regulating Christian and heretical beliefs and behavior (excommunication that used to be enunciated directly by the Church) can no longer have the authority of law, unless they are authorized by the body politic, whose foundational power differentiates the legal and the non-legal.

The Law of Conversion

Charles Taylor's works, discussed in the previous chapter, are critical and sophisticated.¹ But there are many triumphalist and simplistic accounts of Christianity and the West, such as Remi Brague's *Law of God*, which stresses the limited scope of canon law in medieval times. Brague wants to illustrate the absence of law proper (understood as a prescriptive regulatory law) in Christianity and see instead a law that is purely metaphorical (the law of grace) enabling freedom and autonomy of legislation, in contrast with the rigidity of law in Judaism and Islam. Surprisingly for a historian of Christian Europe, Brague ignores the unprecedented legal power of the Church over inner selves and outer deeds, and writes, without proper evidence, that canon law does not claim to encompass "the totality of human behavior," leaving aside and untouched the "whole domain of morality."² Brague adds that there is no morality specific to Christianity, because it relies only on "common morality," that is (to make his statement more explicit), a universal morality, inscribed in Christianity from its origins. And yet Brague, contradicting himself, claims that canon law only deals with "specifically religious activities," without explaining how it can be "specifically religious" while not dealing with morality. This is to forget that for Kant, not the least of European philosophers reclaimed by Brague, what is distinctive about Christianity is its morality, particularly in relation to sin and salvation. The latter are strikingly Christian notions determining a specific Christian theology, jurisprudence, devotional practice, and ethics, exemplified in repentance and confession.

In another iteration, Brague writes that, "in Christianity, grace is not set in opposition to the law,"³ a statement that is certainly not true when returning to Augustine (quoted extensively by Brague), even less so when dealing with Luther.

As I showed in the previous chapter, in early Christianity there was no reference to a law authored by the Church (regulated distinctively by internal canons) or the notion of “canon law” that appeared much later, and while the eternal law, for Augustine, was part of divine goodness and the cosmic order, there was no organic link between eternal law and positive laws. Moreover, there is a major conflict in Augustine’s thought, not only between the eternal law and positive laws, but most important, between positive law and grace. For Luther, as we will see below, the whole point of the Reformation was precisely to start from the opposition between grace and law. Reinterpreting Paul’s famous quote, “The letter kills, the Spirit gives life,” Luther stresses that “The law kills, but the grace of God gives life” as a central argument in his rejection of the Church’s law from any purview over the inner self.

My point here is not about whether canon law dealt with morality (the response to this question is obvious). Rather, the previous and current chapters study *how* the ethical, encompassing the moral, is instantiated in its relationship to the law, at key moments of Western Christianity’s history, both internally and in relationship to the non-Christian Other, entailing changing understandings of both ethics and law, and new institutional arrangements. Brague’s quite basic misconceptions about canon law and the relationship between grace and law are problematic in relation to Christian theology and to the conceptual history of the modern self, since they ignore the centrality of the distinction between *forum internum* and *forum externum* in the ethical formation of the Christian self, and miss the tensions between law and ethics constitutive of Christianity. Brague does not grasp the relational ethics that emerges out of the unprecedented spiritual and institutional Church power over inner selves by which the life of the soul became regulated by canon law as part of pastoral care (notably through individual confession). His claims are also of no help in understanding the need, for Hobbes, to theorize the new monopoly of the state over the formulation of law (and the exclusion of the Church from this new normative order) in the seventeenth century. This was to leave the space of beliefs and ethics located in the *forum internum* previously regulated by canon law, outside the purview of state law (studied in this chapter). It is, actually, those shifts between law and ethics, internal to Christian Europe, that help us understand how the regulation of the relationship to the non-Christian Other changed between the sixteenth-century colonization of the Americas, and the nineteenth-century colonization project.

The European trajectory of law from the colonial moment in the sixteenth century to the colonial project of the nineteenth century illuminates the relation between law and ethics, and between inner self and outer deeds, informing the constitution of “social” relations as the area of intervention of colonial law in Muslim territories. European colonial officers and scholars of Orientalism deplored that Islam conflated “law” and “religion.” A key dimension of colonial “legal reform” in the nineteenth century was precisely the attempt to separate the two,

with the assumption that the regulation of social relations was a legitimate space of legal intervention (enabling colonial rule and economic accumulation benefiting both colonizers and colonized), even if it infringed and shaped the domain of shari'a, as it was claimed that "religion," entailing inner selves and beliefs, remained untouched. One of the results of this dimension of colonial law, along with Orientalism, was to exclude the regulation of acts of worship from what was understood as the "legal" in shari'a, as the "legal proper" was equated with the juridical regulation of social interactions (see chapter 6 and chapter 13).

This attempt to "rationalize" shari'a (studied in detail in chapter 13) involves prior shifting conceptual and institutional arrangements defining the relation between law and ethics, and between external deeds and inner selves, occurring both in Europe and in the colonies from the sixteenth century to the nineteenth century. It is this story, relating theological and philosophical representations with legal knowledge and institutional changes, that I would like to recount in this chapter.

While the institutional power of the Catholic church was deployed in its full force at the time of the colonization of the American Indies under the overall nominal authority of the papacy informed by the coercive conversion of Jews and Muslims to Christianity and by inquisitorial practices targeting inner beliefs, it was also a time of theological critique of the Church's power over the souls exemplified in the Reformation alongside the development over a century of new discourses of truth (involving visibility and materiality), and new institutional arrangements between state and Church. Yet, when the Spanish empire subjugated the Indians materially and spiritually, the Christian episteme was still the only truth regime that provided the set of legal and institutional practices for the colonization of the Other's soul.

PAPAL BULLS AND THE *REQUERIMIENTO*

In the fifteenth and sixteenth centuries, the rules governing sovereignty over new colonial possessions were defined by papal bulls and legislative acts of the monarchs—Laws of the Indies (*Leyes de Indias*) issued by the Spanish Crown. These rules were dealing with navigation, the administration of territories, occupation of land, extraction of gold, trade, and forced labor, but also with the conversion of "Indians" to Christianity, as the "salvation of souls" was part of the imperial projection of power and intertwined with material possession.

The relation between (canon) law, the non-Christian Other (through conversion), and centers of theological-political power (royal and papal) displayed both in the colonies and in the metropole under Spanish rule, and conceptualized by the most important thinkers of Scholasticism, is the last one framed as part of the Christian episteme. The law, formulated and endorsed by ecclesiastical authorities,

was expected to be the vehicle of moral transformation of the Other converted to Christianity.

Papal bulls and the legislative acts of the monarch were both commands addressing overlapping issues, but papal bulls were endowed with “universality,” having prestige and authority that the monarch’s acts did not rival. As seen in the bulls *Aeterni Regis* (“Eternal king”) and *Inter Caetera* (“Among other”), issued in 1481 and 1493 respectively, the pope’s command was still sought and relevant in the settlement of disputes between the two main European empires of the time. Following *Inter Caetera*, the bull *Dudum Siquidem* (“A short while ago”) granted the Crown of Castile “full and free power, authority and jurisdiction of every kind” over the new territories. These decisions were grounded on the duty to “spread the Christian rule” by which the possessions were administered by the monarch but also on the obligation to evangelize its inhabitants who were “disposed to embrace the Catholic faith and be trained in good morals.”⁴

Throughout the sixteenth century, conquest, and increasingly the administration of territories and populations, were regulated by several legal acts issued by the Crown of Castile and drafted by theologian-jurists.⁵ The *Requerimiento*,⁶ issued in 1513, without referring explicitly to the Papal bulls, derived Spanish sovereignty over the conquered territories from papal authority over the universe, as the pope was deemed the “Lord of the World” who had “donated” these lands to the Spanish rulers. Intended to be read out loud by representatives of the Spanish monarch when encountering inhabitants of the new territories, the *Requerimiento* provided the rationale for conquest and subjugation, and a legal basis for war and coercion.

The Indian populations were, on the one hand, requested to formally submit to the Crown’s sovereignty as delegated by the pope. On the other hand, the inhabitants had to make themselves available for conversion and consider the opportunity to be saved on the basis of consent (“they shall not compel you to turn Christians”). But, if the encountered inhabitants did not show submission to the Church and the authority of the Crown, then violence, dispossession, and enslavement became legal forms of intervention (“we shall make war against you in all ways and manners that we can. . . . We shall take you and your wives and your children, and shall make slaves of them . . . and we shall take away your goods”) for which the inhabitants themselves were deemed responsible out of guilt.

The conquest of America is the first (modern) colonial experience, depicted as the foundational moment of modernity, and yet the last one formally involving canon law and the theological-political duality of pope and prince by which both powers regulated spiritual and temporal government of Christians and non-Christians, with non-Christians expected to become Christians. If confession and *forum internum* are the main concepts shaping a legal space under the purview of the Church in relation to Christians, it is the law of conversion that determines the relation between colonizers and colonized, and between Christians and non-

Christians. Conversion, in a way similar to excommunication associated with the *forum externum*, defines the liminal exercise of papal and royal power, as it regulates the inclusion to, and exclusion from, the community and enables Church and civil authorities to classify Indians as non-Christians, future Christians, and former non-believers.

CANON LAW, THE RECONQUISTA,
AND THE SALVATION OF INDIAN SOULS

The law's categories relied on in the Americas were inherited from the Reconquista, and the theological-legal debate about the relationship between coercion and consent in the conversion of Indians, while occurring in a newly conquered territory and involving unfamiliar populations, was nevertheless assessed on the basis of the legal reasoning deployed for the conversion of Jews and Muslims to Christianity and for inquisitorial practices. The reference to canon law in dealing with Indians was both a projection of legislation regulating spiritual and temporal government and a definition of a distinct field of inquiry for scholars and jurists related to the older relation between Christians and Jews, and Christians and Muslims. The internal threat, associated with the Muslims and Jews at "home," was, for Castilian royals and doctors of canon law, the risk of insincere conversion, limited to public behavior, that left untouched non-Christian beliefs and practices in private settings and requiring the establishment of the Inquisition.

In Torquemada's 28 Articles, inquisitors were instructed to inquire into "false beliefs" and non-Christian "ceremonies" that Moriscos and Marranos were enjoined to confess. In the Alhambra Decree issued in 1492, a major concern for the Christian rulers was the Other's law, notably the continued transmission and observance of the Jewish law but also forms of life and daily interactions with Christians that threatened Christian "beliefs" and could be addressed only through the expulsion of Jews from the Spanish kingdom after their forced conversion to Christianity failed to produce true and sincere Christians. The Jews were notably accused of "stealing" and "instructing" Christians in "the ceremonies and observances of their law, holding meetings at which they read and teach that which people must hold and believe according to their law," accusations evidenced by their "confessions."⁷

Vitoria, one of the most influential jurists and theologians of the Spanish empire in the sixteenth century, recommends that coercive conversion of Muslims in Spain should be assessed against its risks, notably the unrest that it would cause in Africa, with consequences for the integrity of the Spanish empire and the Church.⁸ Forced conversion would generate hate and hypocrisy instead of a sincere commitment to Christian faith. However, preemptive expulsion of Muslims could be ordered if they pose "a probable threat of subverting the faithful or overturning the homeland." In

this case, conversion that would result from the threat of expulsion is lawful as long as the ruler's intent is not forced conversion. Hence, while the prince cannot compel Muslims to convert to Christianity, he can nevertheless "make a law ordering the exile from his kingdom of anyone who refuses to become a Christian."⁹ In addition, blasphemy can be a valid reason for launching a war against unbelievers if it is a public act involving interaction with Christians ("a letter full of blasphemies,")¹⁰ not if it is kept within the community of unbelievers. Non-Christians can also be forcibly restrained if they hinder Christians' evangelization mission.

Inheriting categories regulating the relationship with Jews and Muslims, Vitoria developed a legal narrative identifying the valid reasons and set of conditions for a massive conversion of Indians to be receivable in canon law, notably the procedure and steps to be followed for preaching and use of force to be lawful. For Vitoria, it was the Spaniards' duty to preach and instruct the Indians in religious matters in their own territory as a path to their salvation. If Indians were obstructing "the free propagation of the Gospel," then, after an unsuccessful first attempt to persuade them, Spaniards "may preach and work for the conversion of that people even against their will,"¹¹ and, if necessary, war may be waged against Indians to allow preaching to take place freely. War would also be justified in places where evangelization is allowed but in which conversion is not permitted by Indian rulers, or if converts to Christianity are threatened. It is unlawful to abandon territories with converts, and it becomes a duty for Christians to administer them. In places where "a good proportion" of Indians converted to Christianity, including cases where conversion was obtained by coercive means, the pope might request the removal of "infidel" Indian rulers to replace them with a Christian prince. The preservation of Christian faith, preempting apostasy and persecution of Christians, are legal grounds for the liberation of "any Christian slave of an infidel master."¹²

While the colonization of America was a material enterprise of occupation of land and exploitation of resources, it remained subjected to its spiritual telos. Territorial conquest, accumulation of wealth and subjugation of Indians without spiritual colonization would have been considered a failed project. And yet, spiritual colonization cannot be only decreed and requires conversion, which itself entails an act of the will, verbal and bodily expressions of inner volition and thoughts. Conversion enacts belonging to the Christian community and subjects the self to spiritual government. Without individual conversion, the fundamental power of (ecclesiastical) law cannot be deployed effectively.

For Vitoria and the Scholastics, in the hierarchy of laws determined by goodness, there is a fundamental difference regarding the law's spiritual effects between, on the one hand, ecclesiastical law, and on the other hand, other laws, namely natural law, civil law, and positive law. Ecclesiastical law is the only law that has the power to forgive sins and give grace, instituted by Christianity with "the keys of the kingdom of heaven" that were not part of the law of nature or even the Mosaic law

(priesthood could not, under the latter, confer grace).¹³ Unlike the “burdensome” judicial and ceremonial obligations of the “Old Law,” the “Law of Gospels” intentionally left only a few guiding precepts to give the popes, whenever needed, the authority to legislate for the “governance of spiritual things.”¹⁴ Priesthood established by the New Testament is a new power that is both jurisdictional “in the external court of the Church” (Matt.18:15–19), sacramental “to consecrate the body of Christ” (Luke 22:19–20), and binding the inner court of conscience (John 20:23).¹⁵ These powers have been received by Peter and, by extension, the successive popes, who transmit them to priests through the sacrament of ordination. While the power to administer sacraments is a power of “consecration” (*Potestas ordinis*) concerning “the true body of Christ,” the jurisdictional power (*Potestas jurisdictionis*) deals with the promulgation and repeal of laws, excommunication, and matters not covered by the court of penance.¹⁶ Forgiving sins is not a mere verbal utterance, but entails the power of the keys, that is, the power to loose and bind exemplified in baptism by which ablution enables spiritual being.

Mentioning Gregory the Great’s *Book of Pastoral Care* and Gratian’s *Decretum* (both discussed in chapter 10), Vitoria reiterates the distinction between spiritual government in charge of the care of souls, and the king’s temporal power that cannot deal with “liturgy and spiritual actions.” Vitoria stresses that a Catholic emperor is “a son of church, not its head,” and “his duty is to learn, not to teach.” Although kings’ laws and civil laws are not a form of canon law per se, they should nevertheless be obeyed because they are under the overall normative power of papal canons; a king is like “a deputy” authorized by the pope to make laws for the community.¹⁷

While the Scholastics’ conceptualization of power underpinning the deployment of Spanish colonial conquest formally subjected the king to papal authority, it also developed a theological-legal basis for the moral authority of civilian law under the argument that *the law* (and not only divine law) as such should be obeyed. Hence, Vitoria rejects the claim according to which civil laws are binding only in judicial courts (*in foro contentioso*) and do not oblige in the court of conscience (*in foro conscientiae*). For Vitoria, both civil and ecclesiastical laws are binding before the two courts (hence civil law is binding in conscience). It is true that divine law has a number of distinctive features: it should be obeyed by the mere fact that it emanates from God, it cannot be abrogated by humans, and it comes with greater responsibility than human law. However, human law has the same judicial force as divine law, not only because failure to obey it would be a source of anarchy and chaos, but because it is prescribed by the Scriptures themselves. Refuting claims that civil law promulgated by princes make good citizens but not good men on the grounds that it would not be able to shape “inward behavior,” Vitoria underlines that the law makes men good because good citizenship requires virtue.¹⁸ Most important, human law, modeled after divine law, has a

moral authority generated by the enunciative power of law, as the distinction between good and evil is not intrinsic to things and is not obvious to Christians, unless it is posited by the law. Obedience (or disobedience) to the law is, then, the practical criteria for differentiating good from evil.

A GENERAL CONCEPT OF LAW

If Vitoria's writings dealt more directly with the legal basis of the colonization of America and the conversion of Indians to Christianity, Suarez's *De Legibus*, published in the first quarter of the seventeenth century, offers the most systematic work of Scholasticism on the concept of law and its instantiation in the hierarchy of laws inherited from Gratian and Aquinas. In *De Legibus*, the unifying principle defining law is the "binding of conscience,"¹⁹ requiring the study of both ecclesiastical and secular laws from the standpoint of theology and assessing them in relation to salvation. While moral philosophy (Aristotle, Plato, and Cicero are quoted in *De Legibus*) was interested "only" in jurisprudence dealing with "external peace" in relation to the political community, canon law, encompassing canons and pontifical decrees, deals with the "external forum" of the Church, regulating and overlapping with the political order, as well as its "internal forum," including the salvation of souls and divine worship. Since theology is attached to the "higher ends," it can determine the goodness of civil laws and how the latter entail "obligations of conscience."²⁰

Suarez's insights on general characteristics of the law shed light on the relationship between the abstract dimension of the law and its materiality, and between morality and law. If the law is "a moral relation to performance of a given action," from the perspective of the human lawmaker it requires a prior "internal" intellectual act in the mind and a "signum," an "external" materialization and manifestation in speech or writing. The law can exist as an intellectual abstraction as the law is "written" in the prince's "mind" to the extent that the law has an objective life autonomous from the ruler's intellect and requiring active judgment to direct it toward the good.²¹ However, the law would remain incomplete without the will to act by which the law is executed and observed, as the will is the moving force, becoming manifest through the "external" rule projected as a sign of the person commanding. Hence, lawmaking entails "a superior power" whose will to command involves a will to bind.²²

As in Aquinas, Suarez's hierarchy of laws includes overlapping species of law. Eternal law, by definition, is "immanent" and does not require "external promulgation,"²³ but is also "transient" and can be instantiated in a temporal relation to be communicated to humans through prophecy, grace, or the mediation of human laws. Natural law, which participates also in the eternal law, includes what is "con-natural to man" under "rational illumination" in reference to "synderesis or

conscience.”²⁴ Yet, if natural law involves a sense of innate moral obligation, it remains clearly distinct from the moral obligation categorized as “one of conscience,” as the latter is regulated by “supernatural” laws by which a rule is binding under “pain of guilt” (the obligation to confess or to keep the seal of confession). Although natural law overlaps with “supernatural ends,” it should be differentiated from the law of nations (or *ius gentium*, an “intermediate” form between natural and human law), human positive law (or civil law), and “divine positive law” as formally expressed by ecclesiastical institutions and regulating the faithful’s interior and external acts.²⁵ While the Jews were given the written law, and the rest of humankind natural law, Christ did not abolish the law but “confirmed it.” He purified the Mosaic law from all its “imperfections” and “enriched” it with counsels.²⁶

The law, in its generality and specificity, addresses the individual as “a true person,” and presupposes the existence of a community as a “fictitious person.” With reference to “a mutual bond of a moral nature” (Aristotle quoted by Suarez), the law assumes a relation between the individual and the collective person instantiated in the Christian “mystical body.” While serving distinct ends, when properly designed positive divine and human laws should allow a community’s individual members to fulfill their “private welfare” and the care of souls through divine positive law that is also serving the “common good” primarily regulated by human positive law.²⁷

The morality of laws regulating individual and collective beliefs and behaviors is related to its justness, derived from divine legislation. In contrast, human rules can be unjust but, in this case, can no longer be named “laws” (as in Aquinas) because these rules lack “validity” associated with moral obligations. This objective morality should not be separated from the subjective morality inscribed in the individual conscience, as the duty “springs from the intrinsic connection between the required action and that which is good from the standpoint of moral virtue, which we are bound in conscience also to observe in our actions.”²⁸ It is this very connection between the law’s goodness and the faithful’s morality that Luther rejected when he claimed that faith suffices for salvation regardless of deeds, a position condemned by Suarez. Suarez criticized Luther for removing the moral obligation to follow the law (and the deeds it prescribes), and disregarding that all the baptized are bound by civil and ecclesiastical laws with a similar obligation toward divine, moral, natural, and human laws.

THE EXTERNAL LAW AND THE INNER MAN

In the sixteenth and seventeenth centuries, two major shifts based, paradoxically, on radically opposite conceptions of the inner self, deprived the law of its intrinsic virtuousness and morality. On the one hand, the Protestant Reformation was instantiated in the value of the inner self sheltering faith, and the latter’s protection

from any intervention of the Church's law that was deprived of its moral value. On the other hand, the expansion and monopoly of the state over the enunciation of the law mirrored in Hobbes's *Leviathan* was justified by the imperative to protect bodies and to regulate bodily acts, requiring indifference to the inner self and its beliefs.

For Luther, the external law of the Church can never be the site of the good, nor an end in itself.²⁹ In a worldview divided between "true believers" belonging to "the kingdom of God" and the others who are part of "the kingdom of the world," the law is not relevant for the former, but only necessary to the latter. The faithful soul is self-sufficient and does not need the law. A true Christian is "the spiritual, inner man" who is free from the law and from the works prescribed by the law-institution. The Christian needs only "the most holy Word of God, the gospel of Christ."³⁰ The "freedom" of a Christian is precisely the liberty to not follow the law because there is no need of it for the soul looking for salvation. This is what Luther calls "the first power of faith."

However, the world is "flesh," and people need to control the body and interact with others. Humans need to discipline the body (for example through fasting and labor) and make it harmonious with faith. In the perpetual conflict between the inner and the outer person, the law is needed to repress the body and make people available to faith. For Luther, Christians forgot that the law is only a mean to purify the body, not an end in itself. Disoriented by the Church, they believed that they could be saved through works (like gifts or fasting) prescribed by the law, and became preoccupied only with "ceremonies."

For Luther, the good is already present (or absent) in the Christian, and it is a movement from the inner to the outer that produces a harmony between the goodness of the believer and its deeds rather than the other way around. "Good works do not make a good man"; it is "always necessary that the substance or person himself be good before there can be any good works."³¹ That is why people who do the works required by the law without faith will not be saved.

Responding to the accusation of being too literalist in his reading of the Scriptures, Luther gives his own interpretation of Paul's quote: "The letter kills, the Spirit gives life." Putting the Scriptures at the core of the Christian message and preserving it from the Church's teaching and "the fathers' book," he makes of "the letters" the locus of true meaning. But Luther revisits and formulates in a new way the ancient and crucial distinction between the Old Testament preaching the letter-law (inscribed in stone tablets) and the New Testament preaching the Spirit. According to Luther, it is in this sense that Paul's citation should be understood and reformulated: "The law kills, but the grace of God gives life." Grace goes directly to the heart, and never through the letter-law, which is only a source of death. In fact, people need the letter of the law (to kill their "arrogance" in a world of flesh) insofar as it prepares them to receive grace. The Church commands canon law but is unable to preach the Spirit. It is "law without grace," and can only bring death without hope of life.

The distinction between the “inner” and the “outer” is also relied upon by Luther in his discussion of the obedience to the law formulated by temporal authority. Here too, true Christians do not need the law because they have “in their heart the Holy Spirit,”³² which can only be a source of justice. However, the law is needed to restrain “Christians in name . . . *outwardly* from evil deeds,” to preserve humankind from falling into chaos and “preserve an *outward* peace.”³³ Although the true Christian does not need the civil law for himself, he should abide by the temporal rules, pay his taxes, and serve the ruler for the good of the non-Christians (or false Christians), and the preservation of order.

Having established the theological reason upon which temporal power and civil law are based, Luther raises the problem of their limits. The temporal ruler formulates laws dealing with “life, property and external affairs on earth,” but is not allowed “to prescribe laws for the soul.”³⁴ The temporal power may have the delusion that it controls the soul, but the latter does not actually belong to the realm of worldly affairs and cannot be “killed” or given life. Power over the soul is the exclusive privilege of God. Hence, there is no place for any institution’s power (the Church) over inner selves, or for the regulation of souls by any positive law derived from Scriptures and divine teachings (canon law).

Through Luther’s teachings, the construction of the “inner” as the space of the good and faith in Europe after the sixteenth century is imbricated with the fierce and total rejection of the external law, either the law of the Church or the law of the state, as a site of goodness. The law may be necessary to repress evildoers and preserve order, but being obedient to it does not make the Christian a better person, for it has no moral value in itself.

In the sixteenth and seventeenth century, following Luther’s attempt to secure the sphere of conscience from the Church’s sacramental-legal intervention, significant shifts in the political episteme redefined state power and its relation to papal authority and canon law, and reshaped the relation between inner self and law. On the one hand, with Descartes and solipsistic philosophy, the self was no longer a mere receptacle of the knowledge about the world transmitted by the Church, as the inner space became also the site where knowledge of the self and the world is actively produced autonomously from external authorities. On the other hand, political philosophy and thinkers like Hobbes who were interested in the organization of collective life and the securing of civil peace shed a new light on the relation between self and law.

LEVIATHAN, BODIES, AND PUBLIC BEHAVIOR

Political philosophers of the seventeenth century started questioning the status of inner beliefs and their relevance when dealing with the political community and the regulation of public order. In Western Christianity’s episteme, pastoral power

was part of the Christian government based on the priest's intimate knowledge of the self's inner thoughts through confession and his sacramental power. A virtuous collective life under the purview of both spiritual and temporal authorities requires knowledge and care of the souls as it entails good Christians whose sins are corrected under the guidance of the Church. In contrast, philosophers of the state like Hobbes or Spinoza questioned the continuity and symmetry between inner selves and external deeds by which exemplary behavior within the community mirrors and is shaped by inner moral dispositions.

In *Leviathan*, Hobbes relies on the distinction between, on the one hand, "the inward *thought* and *belee*f of men" that can be known only by God, and on the other hand, the public behavior that should abide by the law.³⁵ Beliefs are neither "voluntary" nor "the effects of the laws" but are shaped by the "unrevealed will and the power of God."³⁶ Even the sovereign cannot change men's beliefs because commands are powerless and without effects in the matter of belief and unbelief.³⁷ For Spinoza, each individual has the "supreme right" to think freely, and to interpret religion "for himself." The law cannot make men happy and cannot change men's beliefs. Hence beliefs do not belong to the domain of public law.³⁸ Beliefs should not be "subjected to prosecution and condemnation as if they were crimes." Only seditious "deeds" should be proscribed.³⁹ The liberty of beliefs is not only "a natural right," it is necessary for "the stability of the state," and its suppression would be a "danger to peace."⁴⁰

The separation and autonomization of beliefs from deeds informs the delimitation of the law's perimeter of intervention, as inner selves and dispositions are no longer under the legislation's purview. Theoreticians of the state are not interested in the inner, the invisible, and the immaterial, as only the visible, the material and the external matter for the public order and state sovereignty. However, this does not mean that religion is not relevant to the protection of civil peace and the regulation of public order. Rather, the political function of religion is crucial to the extent that it means external, visible, and public manifestations. It is too important a force to be neglected by the center of power as, for Spinoza, "the external cult of religion must be consistent with the stability of the state."⁴¹ Moreover, the sovereign has "the supreme right of deciding about religion . . . whatever judgment he may make,"⁴² as there would be no law of the state "if no one were obliged by law to obey the sovereign power in matters that he thinks belong to religion."⁴³ For Hobbes too, order and civil peace presuppose homogenous and visible practices by which the subjects "ought to obey" the laws of the sovereign "in the externall acts and profession of Religion" and worship God "in the sight of men."⁴⁴

Compared to the Scholastics and Western Christianity's episteme, the ultimate rationale for the civil power's intervention in spiritual government is not salvation but survival. What matters is the protection of bodies, not the care of souls. Fear of violent death and its corollary, protection of bare life (as Leo Strauss and Giorgio

Agamben would put it), are the foundation of state politics.⁴⁵ Spiritual ends are now subjected and determined by material and physical considerations not only in practice or as an accommodation to reality, but also *normatively* by which the law's domain is defined by these imperatives. Hence, while state law does not prescribe specific beliefs, it dictates what religious practice should be in public. In a world under the Church's authority, sincerity, either in private confession and contrition, or in public penance, as assessed by the priest, was part of the sacramental rules by which outward behavior was expected to reflect inner thoughts and dispositions. The fact that the divide between free beliefs and uniform public religion would cause hypocrisy and duplicity is not an issue for Hobbes or Spinoza. In a Lutheran era, depriving the Church of its sacramental power over the souls was not unwelcome. As Hobbes rejects the possibility that laws are able to shape beliefs, the divide between beliefs and public religion echoes the Machiavellian divorce of ethics from politics, and prefigures the fracture between private man and public citizen without fully enacting them.

The key contentious power that cannot be shared and that requires exclusive exercise by one institution is the legislative power. We saw earlier how the hierarchy of laws (eternal law, natural law, canon law, ecclesiastical law, civil law) corresponding to distinct "authors" (God, the Church, the prince) was understood to serve more or less perfectly the good depending on their proximity and ability to reflect the highest law. This informed both the deployment of the Church's institutional power and its conceptualization by jurists and theologians (Gratian, Aquinas, and the Spanish Scholastics). With the Hobbesian theorization and practice of the state, the hierarchy of laws as such is no longer relevant because there is only *one* law, authored and authorized by the sovereign. Canons and ecclesiastical norms are now mere words and cannot exist as laws. In *Leviathan*, the power to produce law and the power to enforce law are both powers of the state. Scriptures may inform the production of law, but by themselves they don't have any power—or more precisely, they don't have any power as long as they are not formulated in the framework of law and enforced by it. Although the books of the New Testament are "most perfect Rules of Christian Doctrine," they cannot be made laws "by any other authority than that of Kings or Sovereign Assemblies."⁴⁶ There may be several interpretations of Scriptures, but if some injunctions of the latter should be made law, there can be only a unique interpretation authorized by state law: "For, *whosoever hath a lawfull power over any Writing to make it Law*, hath the power also to approve, or disapprove the interpretation of the same" (emphasis added).⁴⁷ Subjects should obey the teachings of Scripture to the extent that they are made laws by the sovereign "whose Commands have already the force of Laws" and who has the monopoly over the legislative power.⁴⁸

The legislative power can no longer be exercised by papal authority because Church and state, as pictured by the classical Christian episteme, have too similar

powers to coexist. The state cannot tolerate dual allegiances, as it threatens the principle of absolute obedience to the sovereign required from subjects seeking protection from violent death as part of the foundational pact of the commonwealth. The institution of two authorities, one temporal and the other spiritual, would “make men see double” and “mistake their *Lawfull Sovereign*.” It would provoke a civil war “between the Church and State, between Spiritualists and Temporalists . . . between the *Christian* and the *Man*.” Hence, according to the Scripture there is “one chief Pastor” and there is “no other Governement in this life, neither of State, nor Religion but Temporal.”⁴⁹ Under the Hobbesian pact, the political community is the religious community. “A Church and a Commonwealth of Christian People are the same thing,” and the sovereign has “the Supreme Power in all causes, as well as Ecclesiasticall as Civill.”⁵⁰ The sovereign can decide on matters related to the interpretation of the Scripture, particularly if they can preserve civil peace. He can also appoint “Judges and Interpreters of the Canonical Scriptures” and can exercise the power of excommunication.⁵¹

The Hobbesian redefinition of law as the norm exclusively produced by the state tasked to preserve civil peace, including on matters that were previously under the Church’s purview and legislative authority, is echoed in institutional and legal arrangements from the seventeenth century onwards, notably through the notion of “public order.” In an influential French law manual published in 1697, the preservation of “public order,” associated with the “external” order, is one of the main missions of the state, whose power should be displayed “in a sensible and visible manner.”⁵² As in *Leviathan*, religion, alongside the state, has a central role in preserving the public order, but only the state has the power to make laws, and more specifically to make Scriptures into laws. In France, this consists in protecting “the public order of a catholic state” through the making of “laws commanding the observance and the execution of the laws of the Church” (*plusieurs lois pour ordonner l’observation et l’exécution des lois de l’église*),⁵³ notably the prohibition of the preaching of heresies. Spiritual authority deals with the inner person’s beliefs and thoughts (“internal dispositions of the mind”) while temporal power handles the outer person’s “external” behavior (attached to the “sincere and faithful obedience to the laws.”) While the Church, dealing with the interiority of the Christian, has the power to “administer the sacraments” and to “open or close the doors of the skies,” the prince punishes the transgressors of laws “disturbing the public order.”⁵⁴

The institution of the state is more than a legal act and a contractual relation giving shape to the subjects’ obedience in exchange for the sovereign’s protection. It is instituting *the* law (civil and authored by the state) as a general form by which the principle of (civil) obedience itself is enacted. Hobbes wrote, “where there is no common power, there is no law.”⁵⁵ At the same time, it is this foundational law that institutes the state with its corollaries and obligations. As a foundational act, the law subsumes under its form all possible competing laws that could undermine its

total, exclusive, and monopolistic features. All other laws no longer exist. Even the higher laws (whether eternal law or natural law) relevant in the state of nature remain mere principles as long as they are not enforced—that is, translated into civil law authored and sanctioned by the state. The truth of the law, and what makes it law, comes not from its ability to serve and reflect goodness and moral principles, but from its materiality and from the material conditions for it to be *effective*, to regulate bodies and external behavior.

The relation between *forum internum* and *forum externum* is thus transformed by the Hobbesian law. As a space of confession initially shaped and regulated by canon law under the supervision of priests, the *forum internum* in the Middle Ages was also called *forum conscientiae*, as it entailed self-examination and sincere repentance. Hobbes relates the meaning of *forum internum* to natural law rather than canon law, only to note its incapacity when it comes to self-preservation from violent death: “The laws of Nature oblige in Conscience always, but in Effect only when there is Security.”⁵⁶ Since the extent to which moral principles guide external behavior is up to each individual and her own conscience, it is very unlikely that all and each individual will be guided by goodness in the absence of guarantees provided by an overseeing power (“whatsoever binds in *foro interno* may be broken”). Therefore, while the *forum internum* was the central theater of Christian life and pastoral care, it is no longer relevant in the civil state. In the political community, only the *forum externum*, including external manifestations of religion as seen earlier, matters.

However, the boundary between free inner beliefs and regulated external behavior was not always clear and generalized in European political culture. The new arrangements between Church and state did not necessarily leave the space of conscience and inner thoughts protected from any institutional intervention. The assumption that the separation of public behavior from inner thoughts was possible and effective was not shared by all the social contract philosophers. For Rousseau, citizens are accountable for their opinions before “the sovereign” to the extent that they matter to the community. While the state has no interest in taking care of souls with regard to the afterlife, it still needs religion, and more specifically, “a purely civil profession of faith” understood as the “sociable feelings” required for good citizens.⁵⁷ Moreover, while individuals are not compelled to believe in the civil religion’s tenets, they can, nevertheless, be expelled from the political community with charges of being “unsociable,” “unable to *sincerely* love the laws,” and unable to sacrifice their lives as a duty.⁵⁸

The civil religion is expected to address two opposite issues posed by Roman Christianity. On the one hand, the exercise of legal authority by the Church and the historical development of Christianity up to Rousseau’s time and the French Revolution, was perceived as undermining the authority of civil power and legislation, by creating dual legal allegiances.⁵⁹ On the other hand, the return to “true”

and “pure” Christianity, the religion of the Gospel with its exemplary virtues, is neither possible (too perfect to be a religion for men), nor acceptable for the civil state, as the hereafter is the only valued pursuit. The true Christian, interested only in salvation, is too indifferent to worldly matters, notably the body politic and civil laws, to have any organic link between him and the state based on citizenship and political sociability (*contraire à l'esprit social; elle manquerait de liaison*).⁶⁰ The civil profession of faith provides cohesiveness to the political community through exemplary public behavior secured by moral beliefs, virtuous sentiments, and love of the law. “Classical” religions can coexist and be tolerated by the state to the extent that their tenets are in harmony with the citizen’s duties, otherwise known as the civil religion’s dogmas, notably the “sanctity of the social contract and the laws.”⁶¹

Rousseau’s insistence on beliefs (and their sincerity) in relation to the state reflects the moral nature of its foundational contract and the “civilizing” process enacting the transition from the state of nature to the civil state, and giving to men’s actions a moral status substituting the sense of duty for instinct, and conventional freedom for natural freedom. The foundation of the social order is predicated upon a “sacred law” enabling all other laws, instituting the moral collective body and its ability to hold together, unified as a collective self with its life and will.⁶² As an expression of wills acting together and unified, the general will generates the original sacred law and laws regulating the life of the state.⁶³ Yet, because individual wills may not act in accordance with the general will, coercion is needed to align moral selves with laws and subject particular interests to the collective good, as the harmony between particular wills and general will is predicated upon the strength of mores and the latter’s concordance with the laws.⁶⁴

Tenets of the doctrine defined by Hobbes, Spinoza, or Rousseau still inform the European legislation regarding authorized manifestations of religious practice that do not threaten the public order, itself derived from the power to define the lawful public religion by the state. These arrangements would be confronted and accommodated to the new imperatives of colonization in the nineteenth and twentieth centuries, and the postcolonial presence of former colonial subjects in European territories. On the one hand, the Hobbesian state assumes a convergence of Church and the body politic, by which the political community’s unity, cohesiveness, and obedience to the sovereign’s authority is strengthened by the political function of religion. On the other hand, obedience is due to the sovereign who can be “Christian” or “Infidel”—for Hobbes, subjects of an “Infidel” sovereign disobeying him “sinneth against the Laws of God”⁶⁵—as civil laws have no faith. While Christianity was still constitutive of the European state and colonization, and part of the foundational difference between metropole and colony, and between civilized and uncivilized, religious conversion was not the central policy of the colonial project of the nineteenth century. However, the centrality of the external, the visible, and

the manifest (including public religion) in the Hobbesian state shaped religious, legal and political arrangements in the colonies, as the colonial state's legislation claimed to leave untouched the *forum internum* while focusing its intervention on the *forum externum* and all matters related to public order and economic interests. Yet, as we will see below, in line with Rousseau's civil profession of faith combining coercion and consent, the *forum internum* was an integral part of the civil (and civilized) state in the European colonial empires, exemplified by the Algerian case where access to citizenship and political rights for Muslim Algerians was predicated upon the "voluntary" rejection of their Muslim personal status.

CIVIL LAWS AND THE CIVILIZING PROCESS

Although influential classical political theories dealing with law, state, and religion in the seventeenth and eighteenth centuries informed representations and practices of the European polity both in the metropole and abroad, most were inward-looking rather than interested in comparisons with non-European countries. While Europeans became interested in non-European political systems and developed comparative knowledge serving the colonial project in the nineteenth century, Montesquieu's *Esprit des lois* is the main precursor of systematic thinking contemplating the relation between law and anthropological difference captured in the diversity of religions, political regimes, customs, mores, morals, modes of subsistence, commerce, and climate.⁶⁶ Under the general category of law, political and civil laws are specific to each nation and are "the specific cases in which human reason applies."⁶⁷

Religion, in Montesquieu's classificatory system, becomes a general category that enables identification of similar forms and comparisons within a hierarchy of instantiations by which religions are evaluated according to their purported intrinsic and distinctive features and whether they fit civil laws. In each society, the authoritativeness and relevance of civil laws is determined by which religion is practiced, whether religion fills the right space (neither absent, nor excessive), and the main tenets of the religion. In places where religion is almost "free of dogmas," "without heaven and hell," the laws are executed with severity. In countries where religion teaches fatalism, the laws should shake the "laziness of the soul" and awake men "sleeping in religion."⁶⁸

In Montesquieu's hierarchy of religions in their relation to the law, Christianity, as the "true" religion enjoining men "to love each other," is predisposed to organize collective life according to "the best political and civil laws" which are—after the true religion—"the best good men can enjoy."⁶⁹ When compared to Islam, Christianity is the religion of "moderation" and "gentleness," shaping the government's restraint and interdependence between prince and subjects ("the prince relies on his subjects and the subjects on the prince"), elevating and softening men's morals,

and promoting “the plurality of women” with a community inclined to make laws. By contrast, Islam is a religion of the “sword” based on a “destructive spirit,”⁷⁰ lacking civil laws, and isolating the Muslim “despot” from his passive and fatalist subjects. The “Mahometans” are too speculative, they pray five times a day, and their dogma teaches them a rigid destiny.⁷¹

Religion as a set of immemorial beliefs has a political function in providing stability to the political regime while civil laws are reflecting change: “*Il est nécessaire à la société qu’il y ait quelque chose de fixe, et c’est cette religion qui est quelque chose de fixe*” (It is necessary to society to have something constant, and it is this religion that is this constant something).⁷² Hence, a conqueror or a ruler should carefully consider any project of conversion of the governed people into a new religion, as he would be taking the risk of provoking unrest.

The classification and correspondence between laws, religion, and political governance in relation to anthropological and collective psychological differences formulated by Montesquieu and later by social scientists, Orientalists, and colonial experts, informed representations and practices related to the “civilizing” project of the nineteenth and twentieth centuries. Colonization entailed new distinctions and arrangements between “law” and “religion,” driving the civilizing process. This was understood as the introduction of *civil* laws enabling dual governance (with citizens and subjects), as well as the expropriation and exploitation of resources, requiring introduction of new juridical regimes regulating land ownership and labor. Besides *civility* (required by Montesquieu to discipline social and interdependent relations), the civilizing process was not guided by massive conversion to Christianity as in the sixteenth century. Conversion was still part of colonization in the nineteenth century, mostly as part of “religious freedom” and the “free market” of religions. But the key for nineteenth-century colonization was assigning *the right place and space* to civil laws and the existing religion (not absent, not excessive, but needed to provide stability), with the assumption that civilization is the unique combination of Christianity, civil laws, and the republican regime.

CIVILIZATIONAL CONVERSION

When compared to the colonization of America by the Spanish empire of the sixteenth century in which conversion of Indians to Christianity was central, the British and French colonial empires of the nineteenth century relied on new arrangements between law and religion enabling, and enabled by, major shifts in the relation between inner selves and public behavior in the European national polities studied above. At early stages of their territorial expansion, the British and French colonial empires defined new spaces of intervention with regard to conversion to Christianity and the “freedom” of belief:

L'exercice de la religion mahométane restera libre. La liberté des habitants de toutes classes, leur religion, leur propriétés, leur commerce et leur industrie, ne recevront aucune atteinte. Leurs femmes seront respectées. Le général en chef en prend l'engagement sur l'honneur. (The exercise of the Mahometan religion will remain free. The freedom of inhabitants from all classes, their religion, their properties, their commerce and their crafts will not be infringed. Their wives will be respected. The general-in-chief solemnly undertakes that these commitments will be upheld.—'Convention between the Commander in Chief of the French Army and His Highness the Dey of Algiers,' 5 July 1830.⁷³

Firmly relying Ourselves on the truth of Christianity, and acknowledging with gratitude the solace of Religion, We disclaim alike the Right and the Desire to impose our Convictions on Our Subjects. We declare it to be our Royal Will and Pleasure that none be in any wise favored, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection of the Law: and We do strictly charge and enjoin all who may be in authority under Us, that they abstain from all interference with the Religious Belief or Worship of any of Our Subjects, on pain of Our highest Displeasure.—'Proclamation of Queen Victoria of the 1st Day of November 1858 to the Princes, Chiefs, and People of India.'⁷⁴

These two texts capture two foundational moments in the history of the European colonial empires with the "treaty" enacting the colonization of Algeria in 1830, and the Queen's Proclamation of 1858 announcing the takeover by the British government of the Indian territories previously under control of the East India Company. While representing the legal basis for the preservation of religion and protection of religious beliefs from systematic governmental policies of conversion to Christianity, they do not exclude "private" initiatives reflecting "religious freedoms," that is, missionary preaching and colonial subjects' conversion based on "free will." Most important, these foundational rules legalize and open up the possibility of state and legislative intervention in all areas that are not considered excluded by colonial authorities from the sphere of "religion." This would be the basis of colonial legislation identifying in shari'a what belongs to religious beliefs and practices, requiring preservation to ensure political stability, and distinguishing this from the law "proper" and its regulative purview.

In India,⁷⁵ following the creation of the position of Governor-General in 1833 and the formation by the Parliament of the Indian Law Commission, the colonial authorities' main mandate was to establish a new legal regime and initiate the codification of laws. The Commission was later tasked to develop "a body of substantive law" and recommended that "Hindu and Muslim laws" would be limited to "succession, inheritance, marriage, and caste, and all religious usages and institutions"⁷⁶ under the overall authority of English law, reflecting several decades of colonial legislation during which the Islamic rules became associated with new legal categories defined as "religious" and "personal" laws and status. A similar

dual legal regime was established by the French in Algeria.⁷⁷ The decrees of 10 September 1886 and 17 April 1889 instituted a hybrid system establishing “Islamic justice” (*justice musulmane*) dealing with the “Muslim natives’ personal statute, successions and the non-francized real estate,” while subjecting Muslims to French law regarding all other matters.⁷⁸

While the spreading of Christianity was the *raison d'être* of the Spanish colonization of America, it became relegated to an undefined horizon in the nineteenth-century colonizations. The colonized’s conversion to Christianity was still part of the colonial imaginary, but it was a civilizational Christianity focusing on external behavior (with its civility, mores, manners, and morals, as Montesquieu would put it) rather than a sacramental Christianity primarily interested in pastoral care and spiritual government. Conversion to Christianity was no longer the enabler and beginning of the colonial project, as in Spanish America. Rather, it became the final outcome and the culmination of the civilizational process.

Hence, for Macaulay, the first chairman of the Indian Law Commission and a prominent figure of British colonialism in India, the Christianization of the colonized, understood as a civilizational conversion encompassing the moral, did not require missionaries or even Christian faith: “There the superiority of the governors to the governed in moral science is unquestionable. The conversion of the whole people to the worst form that Christianity ever wore in the darkest ages would be a most happy event. It is not necessary that a man should be Christian to wish for the propagation of Christianity in India. It is sufficient that he should be a European not much below the ordinary European level of good sense and humanity.”⁷⁹ In Algeria, for French colonial scholars and administrators, the law was the main instrument, through its performative and transformative power, of civilizational conversion. Islamic norms were deemed “rules of a barbarian legislation,” and colonial judges were instructed to make the “French law infiltrate progressively and wisely [the Algerians’] customs,” and adopt in every matter “the general principles of our civil legislation” that would lead to “juridical assimilation” and “a rapprochement between the two races.”⁸⁰ If the civilizational project had to pursue relentlessly “the francization of Islamic law,” the colonial administration had to act cautiously, as Islamic jurisprudence was the result of an “intimate union” between religion, morality and law that “is very difficult to break.”⁸¹

Echoing the Hobbesian state, any decision regarding public religions, and more specifically the spreading of Christianity, was subjected to the governability of the colonized populations and territories, and, as exemplified by Queen Victoria’s proclamation following the 1857 rebellion, was assessed against the risk of unrest and the imperative of public order. For Macaulay, “no government ought to press on the people religious instruction, however sound, in such a manner as to excite among them discontents dangerous to public order.”⁸² However, Christian proselytism led by missionaries was authorized and even encouraged, as it contributed

to civilizational progress of colonized societies; “Christian instruction given by individuals and voluntary societies may do much good. Given by the government, it would do unmixed harm.”⁸³ In Algeria, the “Muslim native,” defined as “the individual of Semitic origin, born or residing in Algeria, French subject and non-naturalized”⁸⁴ (with a personal statute derived from Islamic jurisprudence), could not have access to French citizenship and the rights attached to it without the “abjuration” of his Islamic faith entailed by the act of “naturalization” giving formal, solemn, and legal shape to “assimilation.” Yet, abjuration alone could not grant the native French citizenship but required a whole process as naturalization “is a fact related to the public order” (*fait intéressant l'ordre public*) and abjuration considered “a purely private act” that could not be “imposed to the state” without following the specific rules applied to the naturalization process.⁸⁵

Inner Self, Collective Self, and the Law of the Universal

The circulation outside Europe of state law under the form of the civil code during the colonial and postcolonial moments of the nineteenth and the twentieth centuries carried with it new conceptions of humanity, law, and ethics, and new representations about power and its relationship to society. The human collective was instituted as an ensemble of individuals pursuing their self-interests in the distinct economic and more broadly transactional sphere, what Hegel calls “civil society,” who nevertheless form families under paternal authority, and whose status, rights, and interactions are regulated by the state. (The circulation of these codes in Muslim countries may be epitomized by the 1949 Egyptian Civil Code studied in chapter 13.)

This circulation of new conceptions and categories of humanity, law, and ethics was enabled by the institutional changes of the seventeenth and eighteenth centuries that culminated in the 1789 French Revolution and its juridico-philosophical language of reason, freedom, rights, and universality. In *The Declaration of the Rights of Man and the Citizen*, the Law is instituted as the expression of the general will (per Rousseau), locating sovereignty in the nation, affirming freedom and equality of rights to be protected by the state, and regulating intersubjective freedom.

The 1804 French Civil Code, informed by the 1789 Declaration, is structured around the recognition of the juridical person’s individual rights, the regulation of inter-personal relations, family life under patriarchal authority, and contractual relations of property and transactions under state authority, in conjunction with political rights defined by constitutional law. More generally, Kant’s *Metaphysics of*

Morals and Hegel's *Philosophy of Right* mirror the late eighteenth- and early nineteenth-century codes, constitutions and declarations (including the 1794 Prussian Code informing Kant's writings on law). They also offer a philosophical conceptualization of those texts and the politics attached to them based on a new understanding of the relationship between law and ethics.

These very concepts of reason, will, freedom, rights, and universality constitute the philosophical grammar of the late eighteenth and the early nineteenth centuries that still inform the juridical categories and formal institutional arrangements of the contemporary state (and supranational constructions like the European Union) and what it claims to achieve both in and outside Europe. Key moments include the recognition of the inner self as a space of full moral autonomy shaping the juridical-political citizen, particularly by Rousseau with the duality and overlap between the moral in his *Confessions*, and the political in the *Social Contract*, and Kant in his *Metaphysics of Morals*. Locke, Smith, Mill, and Bentham also established conceptions of society informed by the individual pursuit of material interests. With these developments in mind, a central question for continental philosophers and lawmakers was how to conceptualize the collective that would not be reduced to atomistic individualism.

The notion of universality, and what can be universalizable starting from the free individual subject (in its Kantian version), entailed inter-individual interactions regulated by state law, and meant that this very subject was able to think from and beyond its inner space and individuality to recognize the value of the others as equivalent free moral subjects. Opposed to the Kantian formulation of morality located within the inner self, and yet recognizing the latter's value, Hegelian philosophy introduced universal and progressive history (and, therefore, comparisons with other societies), and the circulation of legal forms (individual rights, the state and its law) in a systematic way. (Kant obviously refers briefly to the *Idea of Universal History of with a Cosmopolitan Aim*, but not systematically.) For Hegel, the ethical (as distinct from the moral, confined to the inner self) is only achieved in collective forms, and in its most rational shape that is the state.

Kantian morality, attached to the inner self and the Hegelian historical and "substantive" ethics, remain the most influential Western understanding of the relationship between law and self. It informs the more recent formulations by Habermas and Rawls (see chapter 14). Kantian and Hegelian philosophies are also essential in grasping the contention as to whether the law, the state, the social, history, and rationality, distinct from the individual subject's morality, are "value-neutral" or have an ethical value by which those who have achieved their highest forms have also an ethical (civilizing) mission vis-à-vis other people on the stage of (Hegelian) "World History," under which legal forms and their attached concepts are universalizable and universalized.

STATE LAW AND ETHICS: INNER SELF, FREEDOM,
AND RATIONALITY

The Kantian duality between, on the one hand, law dealing with the materiality and coerciveness of bodily acts, and, on the other hand, ethics addressing the inner self and his motives is mirrored in the distinction between the juridical law and the ethical one that commands the subdivision of *The Metaphysics of Morals* into two parts, the first devoted to “the doctrine of right” and the second to “the doctrine of virtue.” For Kant, the juridical laws dealing with rights, notably in relationship to reciprocal freedom and to the acquisition of things, are located in the *external* sphere. It is the task of the jurist to know “the external laws” and “to know them externally, that is, in their application to cases that come up in experience.”¹

As the sphere of externality, the juridical regulates the private right of possession by which the body owns what is external to it, whether land or “a wife,” “children,” or “servants” whose legal validity is never secured in the “state of nature” but fully recognized only in the “civil state.” Private right comes under the purview of public right, that is “the right of a state” to regulate material and bodily interactions. Through this juridical frame humans leave the unregulated violence of the state of nature to enter the pacified relations of the civil condition under which the state is fully sovereign and has the right to punish those contravening the legal order.²

The Kantian juridical sphere that legitimizes political inequalities (with the inferior status of women and the underclasses) is informed by and mirrors key articles of the Prussian Civil Code, first published in 1791. This recognizes “the general rights of Man based on the natural freedom to seek and promote his own fortune, without infringing upon the rights of others,”³ but actually maintains the political inequalities of both patriarchy and the society of estates’ hierarchies.

While clearly distinct, the juridical and the ethical are, from a Kantian perspective, all part of “moral laws,” both determined by procedural rationality, and both the spheres where human freedom is displayed.⁴ In Kant’s own terms, *The Metaphysics of Morals* is an a priori inquiry that should be distinguished from “an anthropology” of morals, for it is formulated independently from any experience and human motives occurring in concrete situations and specific cultural contexts. In contrast to physics, which deals with the science of nature, the Kantian science of ethics deals with “the laws of freedom,” which include empirical knowledge described by “practical anthropology” and the “rational” knowledge under the purview of “morals.” The foundational truth of morals is not its content but its form, which is the result of the conceptual work of procedural reason free from all empirical considerations and seeking to establish the “supreme principle of morality.”⁵

While an action may be described as legal in relationship to its conformity to the law, the morality of an action deals with its maxim, “a rule that the agent himself makes his principle on subjective grounds.”⁶ The law may be the same for all,

but several subjects may have different maxims when they conform their action to the law. In other words, the distinction between the law and the maxim opens up the question of morality understood as the possibility of different appropriations of the same law by several subjects. It is precisely the multiplicity of maxims necessarily leading to moral relativism (or one may say to moral subjectivism divorced from its universality) that is not acceptable for Kant. The categorical imperative to “act upon a maxim that can also hold as a universal law”⁷ is a way to secure the universality of morality, for the agent considers his actions first from the perspective of his subjective principles, and then he succeeds (or fails) in universalizing them.

The only way to secure the morality of an action is to rely on the principle of duty, prescribed by reason to the subject “absolutely and so objectively (how he ought to act).”⁸ While the imperative requires from the subject only (external) conformity with the rule, the categorical imperative is not separable from the sense of duty and calls for a work of “necessitation,” that is, “the representation of the commission or omission of an action as a duty.”⁹ Hence, for Kant, “external lawgiving” is based only on external incentives and not on the idea of duty, while “ethical lawgiving” is recognizable when there is an “internal incentive to action (duty)” that must never be externally given.

With Kant, it is the inner self that encompasses all dimensions of ethics and what differentiates the ethical from the non-ethical, as Kantian ethics is linked to action, and yet remains fundamentally a mental and cognitive process. Even when relying on common cognition, the ethical value of an action does not lie in its mere conformity with duty but whether it is done “from duty,” namely “the necessity of an action from respect for law.” This entails a mental operation by which the “law” is pictured only by the subject as a distinct element devoid of any other association that could compromise the integrity of an exclusive and unique motive for action: “The representation of the law in itself, which can of course occur only in a rational being, insofar as it and not the hoped-for effect is the determining ground of the will, can constitute the preeminent good we call moral, which is already present in the person himself who acts in accordance with this representation and need not wait upon the effect of his action.”¹⁰

As an inner exercise of rationality and as an expression of autonomous will, determining what is ethical requires the labor of reason to go through an epistemic procedure aiming to define morality in its purity, namely an a priori knowledge of morality that is free of empirical morality expressed in socio-anthropological beliefs and practices. A key component of Kantian rational morality is its ability to be universalizable by which the maxim, as a subjective principle underpinning acting, can be generalized to, and claimed by, each and every one. As an inheritor of the Christian tradition, on several occasions (as when defining the categorical imperative) Kant uses the word “law” not in the juridical sense but in reference to

morality, stressing its necessity, prescriptive force, and universality regardless of time and space.

Representations in relation to the will are central in the mental process upon which Kantian morality is based. The will needs to be “purified” from all inclinations and motives to reach a will that is projecting action only out of respect for the law. This does not come naturally but is the result of procedural reason, and may entail an internal struggle. To have a will means for a rational being that she is able to choose “that which reasons cognizes as necessary”;¹¹ she must be able to represent laws and to act in accordance with those representations. When reason and will are not aligned with each other because what reason enunciates as a moral truth (the “objective necessity”) is not owned by the will, there is a need for the work of and on the will to represent the imperative as an objective principle (the law) to which the will needs to conform. It is also in the inner mental space that the will can shape the relation to itself by willing what “ought to happen even if it does not.”

As a process centered around the self, Kantian ethics includes, paradoxically, a full consciousness of the unconscious, as it is through this awareness of the real and ultimate motives for action that the self can tell whether her will is aligned with the pure sense of duty. Kantian ethics also requires self-determination, by which the self is not only an addressee of the “moral law” but is also her author, as the autonomous will freely submits to the “universal law” that it gave to itself.

When shifting from the individual to the collective, the “kingdom of ends” is the space in which the union of rational selves is regulated by common laws treating each and every one “never merely as means but always at the same time as ends in themselves.” Within this collective, the very moral lawgiving is a self-centered process that can regulate the union as it has already been through the filter of the universalizable will within each subject: “Lawgiving must, however, be found in every rational being himself and be able to arise from his will.”¹²

Here, there is no room for heteronomy even transmitted within the Christian tradition, as it should not be expected that a rational subject will merely accept the ideal of the Gospel without reasoning and comparing it to “our own moral cognition.” Religious (Christian) morality is not accepted or rejected beforehand; it should go, like any empirical norms, through the filter of rational morality to determine whether it fits pure morality or not.

The difficulty and paradox of the Kantian ethical law is that it should be formulated by the subject and, at the same time, be able to reach objectivity and universality. It must conflate action with duty, and make duty the incentive to action. If there is an incentive other than the idea of duty itself, it leaves the domain of the ethical for the sphere of the juridical-legal. To determine whether an action is ethical or not, one should always ask for the ground for such a choice, which lies in the inward self of the subject, and is only known by him.

The Kantian (external) law of right creates an obligation to the subject: "Act externally so that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law." However, it is a mere necessity, and as such, does not address the ground for his action and does not call for an ethical inner work dedicated to the formulation and appropriation of ends: "No external lawgiving can bring about someone's setting an end for himself (because this is an internal act of the mind), although it may prescribe external actions that lead to an end without the subject making it his end."¹³

Moreover, in the doctrine of right, Kant is interested in securing the "external" life of the subject, notably his property rights. Relying on Hobbes and Rousseau, Kant stresses that the transition from "the state of nature" to the civil condition is the only way to protect "the possession of external objects." For the civil state is an external lawgiver, which holds the power to enforce the law; "only in a civil condition can something external be mine or yours."¹⁴ This coercive power remains a mere external force and is unable to shape the subject's ends. In other words, the external law can never be ethical in itself, for the ethical is itself "a law" that can only be produced in the interiority of the subject in relationship to action and duty. Kantian ethics is a movement from interiority to exteriority, and from subjectivity to objectivity, in which the ground for choice is transparent to the subject. It assumes the notion of choice itself, in which there is always a thinking related to a doing, and a thinking that always comes prior to doing.

From the Kantian perspective, collective life is independent from ethics, for the latter has been completely internalized and subjectivized. In a polity grounded in amoral foundations, the main task of the coercive civil state can never be the formulation of ethical laws regulating the subject's interiority. Rather, the state should formulate laws regulating reciprocal constraints and freedoms, and securing property rights. Of course, the question of intersubjectivity and the relationship to others is an ethical concern for Kant, but ethics can never be relevant for the external law as such, and should always be raised at the level of individual conscience. If each individual acts according to ethical imperatives, then the world, including the political sphere, may be moral. Even from the neo-Kantian perspective developed by John Rawls, it is the fictional institution of society under "the veil of ignorance" that is necessary for the theory of justice to be possible, for it cannot remain conditioned to the individual categorical imperative.¹⁵

However, in *The Religion within the Limits of Reason Alone*, Kant theorizes the institution of collective ethics in religion beyond the individual subject. Paradoxically, even if the autonomous subject is the only locus of ethics, religion, as the space of the community, remains a central ethical domain in his philosophy.¹⁶ Kant operates a reduction of religion to the ethical, exemplified by Christianity which is the "pure," "true," and "universal" religion. Although (rational) morality is not based on religion, religion necessarily arises out of morality. The moral religion

creates the conditions for “the sovereignty of the good principle,” which cannot be attained at the level of the individual only, but needs to be established at the level of a society endowed with a universal mission, “whose task and duty it is rationally to impress these laws in all their scope upon the entire human race.”¹⁷

Even if the ethical collective state is distinct from the political one, they are, in fact, imbricated, because the former cannot exist without the latter. The political-actual commonwealth contains in it the possibility of being at the same time the ethical commonwealth. Kant underlines both the distinction and the analogy-similarity of the two communities: “A union of men under merely moral laws . . . may be called an *ethical*, and so far as these laws are public, an *ethico-civil* (in contrast to a *juridico-civil*) society or an *ethical-commonwealth*. It can exist in the midst of a political commonwealth and may even be made up of all its members (indeed, unless it is based upon such a commonwealth it can never be brought into existence by man).”¹⁸

LAW, COLLECTIVE SELF, AND UNIVERSAL HISTORY

With the structural shifts and key revolutionary events of the seventeenth and eighteenth centuries mirroring a new conception of the human defined by “universal” and “equal rights” guaranteed by citizenship attached to the state, the law became the main language, object, and vehicle of those transformations. On the European continent, the idea of a code, previously attached to imperial Roman law and the Justinian Code, acquired a new significance with the juridical texts of the late eighteenth and the early nineteenth centuries, and most famously by the 1804 French Civil Code, also known as the “Code Napoleon.”

In many respects, Hegel’s *Philosophy of Right* mirrored and conceptualized the shaping of the new European polities and their attached individual subjectivities by state law from the nineteenth century onward, informed by both the Enlightenment and Romanticism. The *Philosophy of Right*’s structure captures and synthesizes the key principles and new legal categories used by the codes that are also the new epistemic categories subsequently relied on by social sciences, and the new political language used in the European public spheres in reference to the state, civil society, the family, the individual, the economy, and the contractual relationships of production, of work, and of property that would circulate outside Europe in colonial and postcolonial times.

The code’s legal form matters as much as its substantive content, and constitutes a major shift in the Hegelian history of the development of rationality and freedom. The drafting of a legal code does not necessarily mean that it includes only new substantive content (if compared to prevailing customs), but rather that the rights are given an intellectual shape in thought, and are grasped by thought and not merely given unreflectively. The code brings order and systematicity to posi-

tive legal norms that could be otherwise seen as arbitrary and merely posited.¹⁹ With the code, rights are universalizable and universalized, and have a shape that sustains itself abstractly, and, yet those rights are at the same time very concrete, circumscribed, material, and enforceable. For Hegel, “the scope of the law ought on the one hand to be that of a complete and self-contained whole, but on the other hand, there is a constant need for legal determinations.”²⁰

It is this understanding of the code as the highest form of rationality (yet, unlike the Hegelian version, equated with natural law) that is the ultimate justification of the drafting by jurists of the 1804 French Code Civil regulating civil rights: “Le droit est la raison universelle, la suprême raison fondée sur la nature même des choses” (The law is universal reason, the supreme reason grounded on the very nature of things).²¹ It was explicitly distinguished from the Islamic law’s arbitrariness: “*En Turquie, où la jurisprudence n’est point un art, où le bacha peut prononcer comme il le veut*” (In Turkey, where jurisprudence is not an art, and where the pasha pronounces the law as he wishes).²² This conception informed the subsequent cross-cultural comparative study of law in European jurisprudence and social sciences, notably Weber’s category of (irrational) “Kadi justice” (see chapter 13).

In the *Philosophy of Right*, state law is not value-neutral, merely regulating bodies and other material and “external” things as in Hobbes’s and Kant’s thought, but has rather moral and ethical dimensions entailing a distinct Hegelian understanding of the latter. While for Kant the moral is confined to the inner self and its motives, in Hegel’s thought the law offers an organic link between the inner self and its outer deeds. The ethical is not a given state or a delimited space but a matter of becoming, with the individual (or collective) subject moving gradually from the immanent to self-consciousness, gaining power and asserting itself.

In Hegel’s writings, the law is both an intellectual construct that can be grasped conceptually and a form that has a material existence shaping individual and collective life. Yet while the law should not be reduced to its positivity and has a rational and ethical significance attached to an epoch and to a form of collective life, it is also its very positivity that matters, as this entails the actuality of physical forms and embodiments that a morality limited to the inner self can never reach. In that regard, the *Philosophy of Right* could be read in conjunction with the *Phenomenology of Spirit* as it traces the material history of consciousness, self-consciousness, and rationality. The law is a powerful and pervasive driver of rationality, but this is an embodied rationality actualized in the history of inter-subjective relations and collective forms of socio-political organization.

For Hegel, the intervention of thought that is part of the “inner voice,” either rejecting or validating the existent (in this case, positive right as it exists), and which can take the more elaborate shape of theories distinct from the real, is the distinctive trait of the “modern age” (and Protestantism) that does not merely accept what is given or ordered but requires a perpetual work of justification and

validation for it to be deemed legitimate by subjects. The *Philosophy of Right* is the history of ethics, which is also, for Hegel, the history of freedom and rationality. It includes the three successive conceptual moments of right (*Recht*), morality (*Moralität*) and ethical substance (*Sittlichkeit*). Hegel's ethical journey starts with right understood as the first actualization of freedom, that is, of free will, as the will is "naturally" free and is the junction between thought and actuality ("thinking translating itself into existence is will").²³ Here, the ethical is the rational, as it necessitates a work of (Hegelian) rationalization consisting in recognizing what is true in the real that enables the subject to be at peace with the external world.

Taking shape first in the inner self as an abstraction ability, the will encompasses feeling and the thought by which it is also able to represent itself and "to posit any content in himself by his own agency." This "pure indeterminacy" and "pure reflection into itself," that is not bound by any limits, is an expression of freedom, but in its "negative" form that, because of its one-sidedness and its circularity in the inner self, leads to destruction and fanaticism (like the French Revolution's Terror) when it is unleashed without any mediation in the real.²⁴ In contrast, the constructive will, while originally and always potentially indeterminate, is limiting itself to a particular determination. "A will to be a will must in some way limit itself,"²⁵ that is, it must will something rather than projecting itself as mere will that wills. In this way it thinks and acts as the productive relationship between inner self and the external world, and translates "the subjective end into objectivity through the mediation of activity and of an external means."²⁶

Here, freedom of the will is obviously not arbitrariness (doing as one pleases), but is educated (cultured as part of *Bildung*) to will the rational. The will abstracts itself from the particular, not to stick to pure indeterminacy, but rather to aim for the universal as the self becomes self-conscious in the recognition of the other, and realizes itself through the other not only in inter-individual relationships but also in collective forms proper, that is, not confined to inter-individuality. This does not mean that the will is in denial of what is immediately given before itself through the senses. It is rather in a position to take determinate shapes through desires and drives, while at the same time superseding them as "reflective will" and "thinking universality," through active thought. Unlike the Kantian moral confined to the inner self and her motives, right, morality, and substantive ethics are both embodied and historical, taking shape in individual and collective forms attached to distinct epochs and recounted by a philosophical history that is also a history of philosophy.²⁷

In the sphere of right as distinct from morality and substantive ethics, the will, dealing with material things and interactions with other wills, takes the external shape of property. This regulation of things entails a right *of* things, which is itself derived from the (personal) right *to* things attached to persons. Here, things are understood in the widest sense, including the person's "body" and "life," from which the inner self can abstract himself, and that he can externalize as an object.

The person at this stage is abstract, as it has not educated itself through its interaction with the world; it still a potentiality and has yet *to become* over time. And yet, paradoxically, its first external actualization is in a mere thing, “a poor kind of reality,” by which its being is mediated: “The abstract personality in its very immediacy can have no other existence than in the determination of immediacy.”²⁸ The expression of the will’s freedom is, actually the power to subjugate any thing, and to own it, providing a material shape to what is originally abstract. This reification, while a reduction of persons, including their intellectual creations (sciences, arts, “even religious observances”) to things, is at the same time what enables regulated interactions between persons through their wills and their ability to contractualize their exchange, giving a value to what is initially inward and spiritual.

Property, as a reified expression of will, includes also the self’s property over his body and life, and is a reminder that the self cannot reduce himself to his inner life. An enslaved individual cannot put an end to his coerced existence by merely pretending to be free, as freedom is not only a proclamation of the self but, to be actual, requires the others’ recognition because the self exists for them materially, as a body. Hence, the self exists to the extent that its living and autonomous materiality is recognized by the others, namely is objectivized through the mediation of physical things that have been differentiated, demarcated, individualized, and appropriated by the will.

This conceptual shift is also a historical one. While the person’s freedom was initiated as a principle by Christianity, it became effective only “yesterday” (in reference to the liberal revolutions and liberal legal changes) following the legal recognition of individual property as the new societies’ cornerstone.²⁹ The (Hegelian) moral sphere (*Moralität*) is a shift towards inwardness enabled by self-reflection, opening up the space of interiority that is not under the purview of state regulation, legislation and enforcement: “Thus, the laws of the state cannot claim to extend to a person’s disposition, for in the moral sphere, I exist for myself, and force is meaningless in this context.”³⁰

Morality requires subjectivity proper (distinct from the mere person with a legal status and legal agency), understood by Hegel as “the infinite and inwardly present contingency of the will.”³¹ Here, morality is understood in the Kantian sense as self-determination, by which the self defines herself not in the “immediacy” of her existence captured by “abstract right.” This means that she is not a mere owner, acting body, or a contracting agent but is a subject with intent, motives, and conscience, able to recognize others in their (moral) subjectivity. Through this the collective good can be achieved beyond transactional and inter-individual relations. It is with this (moral and inward) subjectivity that freedom actualizes itself by means of self-determination determining the will’s motive and purpose (unlike the sphere of right where motives did not matter), regardless of what and how the external world presents itself to, and constrains, the subject.

Subjectivity takes the form of conscience as a radical immersion into the inner self, “the deepest inner solitude within oneself in which all externals and limitation have disappeared—it is a total withdrawal into the self.” In modern times, this inner space is not heteronomous, given by religion as in earlier times, but is autonomous thought by which conscience defines and determines itself, and becomes “my sole source of obligation.”³² In a way similar to the “unhappy consciousness” in the *Phenomenology of Spirit*, and Socrates “retreating into himself in search of the good” at a time of declining Athenian polity, this primacy and circularity of the thinking inner self that validates the good in its inner space emerges when the subjective will is deeply unsatisfied with what the external world offers as formal right and actual good.³³

At the same time this understanding of the good, which takes its most elaborate form with the Kantian moral duty (the “pure and unconditional self-determination of the will”), remains an “empty formalism.” This “moral science,” divorced from actuality, is a mere procedure that can legitimate the wrong as it lacks substance and content, or put it simply, as it lacks “human life.”³⁴ What matters here is the subject’s motives, and whose action can be qualified as good by his mere intent and conviction of its goodness.

Subjectivity, to fully achieve itself and actualize freedom, indicates a relationship to the world through the self’s actions, and the subject’s awareness of their consequences. Action, understood as an “alteration” involving an event or a given situation, makes the subject accountable for his deeds, and accepting responsibility, and consequences attributable to a thinking agent with intent. It is through and in action that the subjective will has an external existence of its own, by which the materialized deed takes an “objective” form, and enables the possibility of recognition of the subject through his willed deeds, to which intent and motives are attached. The search for recognition means that the individual’s action has to meet not only the standards of what the subject himself considers as reasonably valid, but requires validation by the external world, that is, meeting the criteria of legality and objectivity. Hegel writes, “Whoever wills an action in the actual world has, in so doing, submitted himself to its laws and recognized the right of objectivity.”³⁵

The ethical sphere encompasses, for Hegel, right (its externality and materiality), and morality (its inwardness and infinite inner freedom) that constitute the three sections of *The Philosophy of Right*. Ethical realization, as the possibility of reconciling the materiality and physicality of existence with (subjective) moral-intellectual freedom in (objective) forms of collective life (family, civil society and the state), includes three important dimensions. First, it is an ethics of action, as the ethical can be achieved only when the individual subject is not confined in his moral and intellectual interiority, but gives this interiority an external and material shape through action: “What the subject is, is the series of its actions.”³⁶ The

subject, in modern times, has a distinctive right “to find satisfaction,” that is, the “right of subjective freedom” that started with Christianity, and structures modernity.

Second, attached to the ethics of action (requiring inter-actions with others), Hegelian ethics is also an ethics of relations, that is, of “universality.” Already, in subjective morality, the individual conscience becomes conscious of inter-subjectivity as the co-existence of other moral subjects that are worthy of consideration (not as mere owners and bodies possibly hindering his material existence as in the sphere of right) and whose welfare matters for him. Yet, in ethics, this care for others is not a mere subjective duty or a potentiality, but takes shape in collective forms based on emotions and love (the family) and on the division of labor enabling the pursuit of self-interest and material accumulation (civil society) that become “universal” in the state. Understood as a collective (that is, in this iteration, certainly not an addition of atomistic and contractual individuals), the state has a distinct life and a distinct will, by which the individual subject is not merely co-existing and inter-acting with others but is a substantive part of a whole embodying and achieving substantive rationality and freedom in history distinct from (and yet linked to) the individual subject’s freedom and rationality.

Third, Hegelian ethics is an ethics of effectiveness and power by which a potentiality takes shape, and becoming is possible. It is not an acceptance of mere existing in its contingency or arbitrariness but is rather an understanding of the will’s power as an expression of its freedom. However, the will able to achieve the ethical is not the subjective will (a mere accident in this process), but the will that gives shape to collectives both in their internal lives as collectives and their interactions with other collectives. The state’s constitutional form and legislative activity is the self-conscious expression of that free will. The law, including the constitutional foundational law, is also the self-expression of the state that wills freely and independently. The law is both an abstract and material shape that mediates between individual subjectivity and the collective. Through its materiality and enforcement by the state, the law, as an embodiment of and enabler for (state) action, has an actuality that is not arbitrariness but rather an expression of rationality, as its content and determinations can and should be justified rationally, that is given reasons for their specific formulation. In that regard, Hegelian ethics is an *ethics of rational effectiveness and power* by which historical achievements grasped and recognized philosophically are not contingent. Rather they display, through the conceptual history of the law, the reasons providing validity and legitimacy to the transformative legal order shaping and shaped by the state, owned by the individual subject who recognizes himself in them.

The Hegelian conception of ethics, entwined with rationality, freedom, effectiveness and history, shaped and captured the expression of major conceptual and institutional shifts in Europe, enabling it to define itself, in colonial and

postcolonial times, as the “West” characterized by a number of common features. First, it provided a diagnosis of, and a solution to, the modern times’ moral loss. The state, through the mediation of the law, is not a mere minimalist entity, a Hobbesian guarantor of order and security, but offers universality, collective substance, and effective will to the individuality that constituted itself in separation from the collective in pursuit of unlimited material interests within the new economy (criticized by Hegel). Second, instead of being confined to the powerless inner self as with the Kantian moral duty, the ethical is now equated with effectiveness and transformation of (external) reality through the will. The will’s freedom and ability to limit itself, translate into determinate shapes, and project itself effectively as a transformative power, has an ethical value. The state’s will, not reducible to the mere pursuit of self-interests or to arbitrariness, offers unprecedented transformative and achieving power through the materiality and conceptuality of the encompassing law. Third, it introduces both time and space in a transformative and processual way, enabling systematic and practical comparisons between peoples, nations, and societies. Here each collective time-space is assessed in “world history” (and one should add, world geography) against the European achievements that are meant to be universalizable. Fourth, Europe’s colonial expansions should not be understood as brute force and exploitation of colonized people, but have an ethical value, because Europe’s unprecedented power and its ability to shape “world history” has itself an ethical value, that is, the ethics of free and effective will externalizing and actualizing itself in the world.

The articulation and key elements of the Hegelian conceptualization of ethics informed, often unconsciously and implicitly, and in a more simplistic way, the relationship between Europe (and subsequently the West) and the rest of the world in the colonial and postcolonial moments of the nineteenth and twentieth centuries. What colonial officers and Orientalists coined as the “moral superiority” of Western civilization, as the “white man’s burden,” as the “civilizing mission,” is better grasped under the light of Hegelian legal philosophy and philosophy of history.

Hegel’s *Philosophy of Right* is also relevant in a comparative anthropology of self, law, and knowledge, as it captures a more specific shift related to the multiplication of modern legal codes in Europe and the coercive circulation of legal concepts and systems from Europe to the colonies. What was being circulated and enforced in colonized societies was a certain conception and ordering of the (male) individual as property owner entering contractual, property, and production relations in “civil society” and the economy, the constitution of the nuclear family under patriarchal authority as the basic unit of the social order, and the formation of the state as an expression of national spirit and national will regulating the socioeconomic order based on the individual, the family, and the economy through the law. Under colonial rule, the “civilizing” process was the moment of “universalization” of these legal categories and conceptions of the socio-political

order that justified the non-recognition of the colonized people as collectives (and their time-spaces) endowed with free, autonomous, self-conscious, and sovereign will on the stage of world history. In postcolonial times, the national legal codes, notably the Sanhuri Code in Egypt (discussed in the next chapter) exemplify the circulation of those legal categories attached to new conceptions of the individual, the family, the economy, the state, and the national and sovereign will.

Hegel's philosophy of law and philosophy of history are also the unacknowledged conceptual starting point of Durkheimian and Weberian social sciences. Durkheim and his followers were interested in studying encompassing and holistic phenomena structuring societies and of which individuals themselves were not conscious. Weberians saw rationalization processes in a historical and comparative manners and studied and hierarchized societies according to their degree of rationality. More specifically, modern state law was for Durkheim, in a way very similar to Hegel, not value neutral, and is the expression of a national spirit (see chapter 14). The encyclopedic Weberian study of the law is the main space where the Western-Roman law's formality and the code's coherence and systematicity are contrasted with other normative orders (the "sacred" law of Islam and "kadi justice," addressed in the following chapter), lacking legal rationality's features.

As discussed in chapter 10 in relation to Charles Taylor's *Sources of Self*, Western conceptualizations of "the universal" cannot do without Hegelian philosophy, which sets the stage for the Western *collective powerful self* that is on a world mission to universalize rationality and rationalization to the non-West, in which effectiveness and subjugation have an ethical value. The Hegelian law provides the organic link of identification between the (Kantian) individual inner self and the collective self. One of the merits of Hegel's thought is to explicitly embrace this conflation of collective power and ethics instantiated in the nation-state and its law, and to shed light on its driving force in world history, determining its relationship to the non-Western Other by which the West claims to achieve the "universal." It is this "universalization," understood as a rationalizing and ethical process, and its reception in Muslim societies, that I will study in the next chapter.

PART SIX

Reason

Modernist Reason and Shari‘a

The Muslim Brotherhood and the Salafis are fundamentalist movements, which means that they are committed to refrain from using the intellect when it comes to religious texts. Therefore, they are by necessity committed to stick to the past. They follow what has been said in the past to the letter. That is why they fight to include the phrase ‘shari‘a rulings’ in the constitution. If you oppose this, they try to get it into the preamble. They would do anything to shackle you to a specific tradition and to the past, thus abolishing the future. But a revolution is conducted for the sake of the future, not for the sake of the past.¹

This quote from an interview with the Egyptian philosopher Murad Wahba, known for his work on Ibn Rushd, sheds light on the anxieties of thinkers who define themselves as “secular” (*‘ilmānī*) in the revolutionary and post-revolutionary contexts where the place of shari‘a in state legislation was the main issue of the constitutional debate occurring from 2011 to 2013. These anxieties, and more generally the debate itself, typify a shift in the relationship between Islamic legal knowledge and collective life that can be traced back to the emergence of new forms of knowledge grounded in instrumental rationality at the end of the nineteenth century. It was not only “the real” that emerged as an epistemic issue for contemporary Islamic legal knowledge, as we saw in chapter 7; it was also shari‘a that was constituted as a “problem” for modernist reason in a context where shari‘a’s authority regarding the regulation of “the social” was not a matter of consensus. Several segments of the Egyptian elite would rather ground the regulation of social life in “reason,” independently from any reference to shari‘a, which became sublated under the broader category “religion.”

In this chapter, I would like to study more closely the shift in shari‘a’s regulative authoritativeness in a context where shari‘a became an object of “rational” knowledge and intervention. It is also where the reference to shari‘a became a discourse among others within the newly constituted “public sphere,” rather than the language coextensive to the community through which claims and counter-claims about the rules to be followed were formulated. This shift, which is co-constitutive of the cleavages that unfolded in the revolutionary and post-revolutionary moments, can be traced back to the emergence of new concerns about “reason” and “rationality” as related to the legal-political regulation of the social order at the end of the nineteenth century.

MODERNIST REASON AND SHARI‘A IN THE COLONIAL CONTEXT

In the last quarter of the nineteenth century, a new judicial system applying rules derived from the 1804 Napoleonic Code and dealing mainly with commercial and criminal cases was introduced. It circumscribed the scope of Islamic jurisprudence for judicial purposes to “shari‘a courts” and several dispositions of the Civil Code. This transformation not only instituted a duality between Western legislation and substantive shari‘a rules *within* the newly established state law. It also introduced another duality between shari‘a rules as state law and shari‘a rules as formulated by Islamic scholars in the social sphere, exemplifying the new distinction between “state” and “society” in which the former became the sole author of the law regulating the life of the latter. Most important, this transformation was enabled by, and went along with, the emergence of modernist rationalism and science as a mode of knowledge that claimed to strip Islamic legal knowledge—and more generally all Islamic forms of knowledge—of its scholarly quality and its very ability to define itself as having the ability to produce truth-claims.

Rather than initiating its demise, these dualities displaced shari‘a, now cast as the constitutive Other that can never be domesticated by state law nor circumscribed in the time-space associated to the modern state. While shari‘a incorporates reference to different orders of existence, and requires the decipherment of revealed speech by scholars for the law revealed by God to be manifest, the state authorizes itself from itself when it utters the law, or one may say, authorizes itself from the very act of authoring the law.

For colonial officers and viceroys, the (re)-organization of the new legal order was a necessary condition for, as much as it reflected, the “civilizing” process associated with the introduction of Western rationality. For the British Consul General in Egypt, Lord Cromer, colonial administration had succeeded in “material” reforms and in bringing “prosperity” to the Egyptians, but it failed in its attempt to craft a new Egyptian “rational” man. On the one hand, colonial experts had to

address material problems, particularly “a persistent neglect of economic laws and a reckless administration of the finances of the state.”² The adoption of new modes of social organization enabled by rational forms of thought would allow Egypt, and more generally the Orient, to enter progressively the realm of “Civilization.” On the other hand, the “logical West” had to deal with the “illogical and picturesque East.” It failed to make the East rational because “Islam, speaking not so much through the Koran as through the traditions which cluster around the Koran, crystallises religion and law into one inseparable and immutable whole, with the result that all elasticity is taken away from the social system.”³

In other words, for Cromer, any attempt to make the “social” a space of intervention and transformation for colonial administration and expertise requires a differentiation between “religion” and “law” that does not exist in Islam. Colonial knowledge and administration assumed a series of distinctions between state and society, and between religion, law, and morality, that were constitutive of European rationality. Their task was precisely to actualize these distinctions and shape the conditions under which these fields should be intertwined or separated.

Exemplified by Cromer’s writings about Egypt, colonialism was informed by Orientalism, but also by European thought of the end of the nineteenth century, in the same way that European thought itself was informed by the colonial project. Both were engaged in the production of (Hegelian) narratives of the development of European reason grounded in systematic comparisons with counter-places and areas, especially Muslim societies. In *The Protestant Ethic and the Spirit of Capitalism*, Max Weber devotes the introduction to a catalog of features of Western rationalism in science, theology, art, state bureaucracy, and capitalism that he considered “lacking” in non-Western civilizations.⁴ The contrast between the West and the non-West in these fields would explain the uniqueness of Western rationalism. Following this approach, the task of the scholar working on the “non-West” has usually been understood as an attempt to make intelligible the causes of its “backwardness” (or more recently its “underdevelopment” and its inability to “embrace modernity”). From this perspective, knowledge production becomes a mere exercise in reenacting these dualities rather than questioning them.

RATIONALITY AND THE CONSTITUTION OF SHARI‘A AS AN OBJECT OF COMPARATIVE KNOWLEDGE

The constitution of shari‘a as an object of knowledge for social theory as formulated by Max Weber models hierarchical comparisons between Western and Islamic forms of thought and social organization. As in *The Protestant Ethic and the Spirit of Capitalism*, the whole project of *Economy and Society* can be read as an enterprise devoted to the study of the “rationalization” process in Western history, as distinguished from other cultural areas. Along with religion and economy, the

law is one of the main areas where modern rationality is displayed in a Weberian narrative, which is both historical and comparative. In his inquiry into “the extent and the nature of rationality of the law,”⁵ shari‘a—embodied by the notion of “Kadi Justice” in Weber’s writings—represents the archetype of the sacred, religious, and non-rational law.⁶

If, following Weber, shari‘a is a non-rational law and an arbitrary form of justice, then what is a rational law and a non-arbitrary form of justice? Weber starts from the distinction between *law-making* (“the establishment of general norms which in the lawyers’ thought assume the character of rational rules of law”) and *law-finding* (“the application of such established norms and the legal propositions deduced therefrom by legal thinking, to concrete facts which are subsumed under these norms.”)⁷ This distinction between general norms and their application is the starting point for in turn distinguishing rational and non-rational forms of justice. While, for Weber, this distinction is absent in primitive forms of justice in non-Western societies, it structures Roman law as well as forms of adjudications strongly influenced by it.⁸

Weber makes another fundamental distinction between *formal* and *substantive* law. A body of law is rational if, in law-making, one can find a process of generalization. This relies on “a reduction of the reasons relevant in the decision of concrete individual cases to one or more principles.”⁹ The formulation of legal propositions needs to reach a high level of abstraction (even “sublimation,” in Weber’s words) on the basis of on an analysis of facts relevant to the juridical doctrine and distinct from a simple analogical casuistry. From this perspective, the process of generalization/abstraction is a synthetic work of construction of legal relations illustrating the conceptualization of the legally relevant social relations.

Another component of generalization/abstraction consists of the constitution of a doctrinal body, namely “the integration of the legal propositions in such a way that they constitute a logically clear, internally consistent, and at least in theory, gapless system of rules.” The doctrine should be “theoretical” enough to be able to subsume all “conceivable fact situations.”¹⁰ The justice is *formally* rational if it is based on adherence to specific and permanent forms like the “adherence to external characteristics of the facts, the utterance of certain words, the execution of a signature or the performance of a certain symbolic act with a fixed meaning.”¹¹ Thus, decisions of justice are *substantively* irrational if they are not made according to a consistent doctrinal body but instead according to “ethical” “emotional” or “political” motives. Decisions of justice are *formally* irrational if the law-making or the law-finding are not controlled by reason but by “external magical” or “divine interventions” like oracles.

According to Weber, the Roman legal system is characterized by its highly analytical nature, for example the *reduction* of the lawsuit to the basic issues involved in concrete cases and the *reduction* of legal transactions to the most “elementary

logical constituents.” For him it is the first to be rational both substantively and formally.¹² Modern rational justice is geographically and historically restricted to the systems that emerged out of Roman law, for instance in Europe through the Italian notaries working closely with guilds who were the main group who maintained and developed the Roman law.

Although “a far-reaching reception of Hellenic and Roman law” can be discerned in Islam, the constitution of secular law independently of the sacred norms never occurred, and perpetuated the irrationality of the law.¹³ Moreover, Muslim jurists were unable to develop forms of legal thought based on generalization/abstraction, without which no consistent legal theory is possible; “systematic law-making, aiming at legal uniformity or consistency, was impossible.” Islamic law was at the same time central to the life of Muslim societies and could not be applied because of its rigidity.¹⁴ Adjudication of cases was rendered by using local customs.¹⁵ The diversity of opinions of the muftis did not allow the emergence of a unified body of doctrine; their views were like “the opinions of oracles” because they were given “without any statement of rational reasons.”¹⁶

Weber underlines the gap between, on the one hand, the prescriptions of the religious tradition, and, on the other hand, the judgment of the Kadi who utters a decision that does not follow the religious norm.¹⁷ This gap is the space in which the arbitrariness of the judge is displayed. In other words, Islamic law is not predictable for a litigant because *law-finding* is not consistent with religious *law-making*, which is itself non-rational. These features of Islamic law (religious, rigid, and unable to be consistently theorized) can be understood as explanations of its marginalization during Islamic history, starting from the Umayyad and the prevalence of what Weber calls the “secular” law in reference to *qānūn*. The latter prevailed in all matters except “tutelage, marriage, inheritance, divorce and to some extent settled lands.”¹⁸ Weber anachronistically and improperly used the notion of *qānūn*, which is the law formulated by political authority and distinct from the jurisprudence produced by Islamic scholars. Most likely relying on the Ottoman case, Weber gives a linear history of decline of Islamic law and uses overgeneralizations without historical and geographical precision.

Comparisons between presumably consistent historical and geographical ensembles known as “the West” and “Islam” on the basis of “rationality,” as formulated by social theorists like Weber or colonial administrators and scholars, also shaped the writings of Egyptian and Arab thinkers of the beginning of the twentieth century. Because of its very religious nature, shari‘a was deemed non-rational and unable to regulate the new socioeconomic order brought about by colonial administration. As law regulating collective life, shari‘a was considered an obstacle to the development of European capital in Egypt and in other Muslim colonies, and had to be progressively replaced by European law securing property rights and economic transactions. Moreover, for the new educated Egyptian elite of the

beginning of the twentieth century, the nation was no longer expected to be organized by legal norms derived from the divine. In a society organized by reason, shari'a had to be subjugated to the regime of distinction between, and separation of, religion from the other orders of collective life, namely law, economy, and politics.

Although most Egyptian thinkers were engaged in the formulation of an intellectual project that would emancipate Egypt from colonial rule, they nevertheless shared with colonial administrators, Orientalists, and European social theorists the systematic comparisons between the West and Muslim societies, as well as several assumptions about the "superiority" of modern material civilization and the role of "reason" and "science" in the civilizing process out of which a series of lacks are "found." Islamic "religion"—the category under which shari'a was sublated—became a distinct object of knowledge and intervention. Its significance and relevance for individual and collective life had to be assessed by endogenous reason, or put another way, by reason endogenous to Egyptians and Arabs, rather than the external voice-reason of the Europeans in a context where Egyptianness and Arabness (rather than Islam) became the new determining self-referential collective identities for many lettered Egyptians.

The knowledge produced by Europeans was part of a holistic enterprise of domination subjugating the temporality of the colonized to the temporality of the colonizer, in which the colonial project was a moment of reassertion of the narrative of ruptures endogenous to Europe and enabled by the "rationalization" process not only reflected in thought but also instantiated in institutions and material civilization. But, as we will see in the following pages, for Egyptian, and more generally for Arab and Muslim thinkers, the dual temporality engendered by the colonial encounter raised several questions about the collective self and its relationship to the past.

MODERNIST REASON

For the educated Egyptian elite of the late nineteenth and early twentieth centuries, the emergence of new forms of knowledge about "nature" and the "social" in the colonial context raised questions about the place and meaning of Islam in the modern world that were dealt with by Farah Antun's *Ibn Rushd wa Falsafatuh* (Averroes and His Philosophy),¹⁹ published in 1903. Antun addresses the new "public" (*al-jumhūr*), and primarily the "rationalists of the Orient" (*'uqalā' al-sharq*), among the new generations of Christians and Muslims who should be able to put their religion in "a sacred place" (*makān muqaddass*) and overcome their religious belonging in order to stand strong in the face of European domination.²⁰ In "a time of science and philosophy" (*zaman al-'ilm wa al-falsafa*), one can no longer claim that one's religion is better than the other's because this kind of

attitude belongs to “the Middle Ages and the time of ignorance” and is against “human nature” (*al-ṭabī‘a al-bashariyya*).²¹

For Antun, as in several accounts of modernity, the transmission of Ibn Rushd’s philosophy to the rest of Europe opened up the possibility of studying Greek philosophy, which was itself overtaken by modern philosophy and the new science of the sensible world initiated by Francis Bacon and relying on observation, experimentation, examination, and demonstration.²² In this narrative, Ibn Rushd’s formulation of a new understanding of causality in the universe in relationship to nature and human deeds, initially based on Aristotle’s philosophy, is the foundational event that paved the way for the emergence of science as action over the world that is at the origin of discoveries, inventions, and industry constitutive of material civilization.

Two important points are implied by Antun’s *Ibn Rushd wa Falsafatuh*. First, the development of industry and material civilization cannot consist in merely using machines and adopting techniques invented by Europe, but calls for the ability to produce a new order of things, enabling the invention of these very techniques through science. Yet the development of science, which cannot occur without an exclusive space of its own, requires the withdrawal of religion *as knowledge* from the world. Second, (re-) assigning religion *a new place* in the world in order to own the means of material prosperity and civilization should not be considered to be a mere imitation of Europe, but “return[s]” to what Muslim thought, as in Ibn Rushd’s philosophy, has already initiated without the Muslims being the actual beneficiaries of its results.

From this perspective, the authoritativeness of shari‘a as a generative form of knowledge assigning meaning and truth to the world is contested. There is no middle ground between “science” and shari‘a for the latter, now subsumed under the category of “religion,” is not able to compete with the former regarding the production of truth. Islam, like Christianity, cannot claim to be knowledge and is assigned “the heart” as its exclusive site: “Science should be put in the sphere of reason because its rules are based on observation, experiment, and examination. Religion needs to be put in the sphere of the heart because, in this matter, one should submit to the books without inquiring about their origin.” If science, understood as “inquiry (*baḥṭh*) into everything and every origin,” starts putting religion under scrutiny, it would destroy religion. Thus reason and the heart, science and religion, should be kept separated from each other for the sake of religion itself.²³

For Islamic scholars and thinkers such as Muhammad Abduh or Rashid Rida, the emergence of discourses like Antun’s about the subjugation of the “new real” to the authority of “reason” did not put an end to the authoritativeness of shari‘a’s ability to regulate collective life. Yet, as we saw in chapter 7, they would critique the inter-generational mode of transmission of Islamic jurisprudence based on schools (*madhāhib*), and would call for, and work toward, the reformulation of procedures

of truth-seeking and rule formulation within Islamic legal knowledge grounded in the Qur'an and the Sunna. It was through this critique and re-foundation in response to the emergence of the "new real" as an epistemic problem for Islamic legal knowledge that shari'a would keep its authoritativeness for the present. However, as suggested by the polemics between Antun and Abduh about the legacy of Ibn Rushd and the place of religion in "a time of science," the authority of shari'a could not be taken for granted among Egyptians and Muslims themselves. Shari'a was now a discourse among others that is not necessarily authoritative for the whole collectivity and calls for arguments not only among those for whom shari'a is authoritative (notably about the right procedures to produce Islamic legal knowledge) but also between those for whom shari'a is *not* authoritative within the collectivity now identified as the "nation."

CLAIMING SHARI'A IN THE PUBLIC SPACE

While in premodern times, shari'a was coextensive to the polity, in modern times its authority needs to be reasserted in the new "public sphere" before it can be considered for regulative purposes. The reassertion of the authoritativeness of shari'a for collective life is epitomized in the emergence of Islamic movements dedicated to preaching and call (*da'wa*) and addressing the new "public," particularly in big cities. In a "nation" envisioned as a social collectivity in which new discourses authorizing and reflecting new forms of life emerged, the transmission and authority of shari'a are put at risk. This calls for its instantiation in a collective voice among other voices, espousing "civil" forms of action and organization.

For Hasan al-Banna, who founded the Muslim Brotherhood in 1928,²⁴ the crisis of transmission of shari'a was also associated with moral decay, particularly in three spaces constitutive of contemporary life: the street of the modern city, the family, and the school. Reviving Islam through *da'wa* was the right response to this crisis.²⁵ In this context, the constitution of a cohesive community with a strong internal life distinct from and yet mirroring new forms of collective life is as crucial as the act of preaching itself. For al-Banna, the Muslim Brotherhood was a movement based on "the strength and intensity of the bond and cohesiveness between the community's members (*shadatt al-tamāsuk baynahum wa quwat rābiṭat jamā'atihim*), which reflect the purity of the hearts and the inner self (*ṣafā' al-qulūb wa naqā' al-sarā'ir*), faithfulness and the feeling of fraternity's sacredness (*al-shurū' bi-qudsiyat al-ukhuwwa*) and the illumination of the hearts with love in God."²⁶ From this perspective, the ways in which shari'a rules are lived and embodied *within* the community and make it distinct from the rest of society is as important as its action in the public sphere.

As with most subsequent Islamic movements throughout the Muslim world, the collective *da'wa* initiated by the Muslim Brotherhood relied on new mediums

(magazines, journals, and later audiovisual and online mediums), new juridical forms (associations and political parties),²⁷ and was involved not only in Islamic education in informal scholarly and pious circles but also in benevolent activities as well as in governmental politics. Paradoxically, the very constitution of religious communities dedicated to *da‘wa* and the adoption of modern forms of collective actions whose aim is “to revive” shari‘a within the “civil” space is itself associating the public discourse about shari‘a with a segment of the Muslim majority collectivity rather than a language shared by all socio-political actors.

SHARI‘A AND THE NATIONAL POLITICS OF LEGAL EMANCIPATION: EGYPTIANIZATION AND RATIONALIZATION

In the postcolonial context, although Islamic jurisprudence was reclaimed by Egyptian jurists in the shaping of a new “national” legal order, its relevance for state regulation was nevertheless assessed against the consistency and “rationality” of modern legal codes culminating in the 1804 French Civil Code and captured by Hegel’s *Philosophy of Right* (see chapter 12). Systematic comparisons between “Islam” and the “West” constitutive of the colonial encounter and displayed in the writings of Orientalists, colonial administrators, and Egyptian thinkers at the end of the nineteenth century were also structuring the writings of jurists in the 1950s, as Egypt became free from British occupation.

In a context where social interactions and economic activities were regulated by a juridical order inspired by French law, the “revision” (*tanqīh*) of the existing legislation was an ambitious intellectual and juridical enterprise whose aim was to “Egyptianize the law” (*tamṣīr al-fiqh*), in such a way that it would make it distinct from a mere imitation of European juridical systems and would reflect the “national life” (*al-ḥayāt al-qawmiyya*). As the notion of *tanqīh* suggests, the new legislation does not claim to be in rupture with the previous legal order but would explicitly be built upon the existing juridical corpus inherited from the colonial period.

The voluminous *Al-Wasīṭ fī Sharḥ al-Qānūn al-Madani* by Abd al-Razzaq al-Sanhuri articulated the existing legislation regarding civil matters into a consistent whole grounded in explicit general juridical principles.²⁸ Al-Sanhuri, who was one of the most influential contemporary Arab jurists and the master architect of what is often called the “al-Sanhuri Code,” reclaimed “Islamic jurisprudence” (*al-fiqh al-islāmī*) for legislative purposes, but subjugated it to state law.

In the new code, Islamic jurisprudence became explicitly the third source of jurisprudence, ranked below the legislative texts (*nuṣūṣ tashrī‘iyya*) and the practice of the judicial system (*‘urf*), and above natural law (*al-qānūn al-ṭabī‘ī*) and principles of justice (*‘adāla*).²⁹ In this configuration, Islamic jurisprudence is not

the ultimate reference for the polity, but is rather encompassed: subjugated to, and assigned a place and a meaning by, the legal order of the state.

Reference to shari'a is thus not authoritative by itself and needs to be justified and authorized by the authors of the law, namely the legislative branch of the state. For the parliamentary committee in charge of the revision of the Civil Code, "shari'a" was "a spiritual heritage" (*turāth rūḥī*) whose legal force had been interrupted by colonial power but could be revived in the new legal order. Yet, the commission did not take for granted that shari'a would be beneficial for regulative purposes and felt it necessary to give *reasons* grounded in positivity and utilitarianism to justify the reference to it: "The return to shari'a does not put the stability of social interactions (*istiqrār al-mu'āmalāt*) at risk but, on the contrary, this return reinforces the conditions of stability through the reenactment of the good traditions (*taqālīd al-ṣāliḥa*) that have been in use in the country for hundreds of years."³⁰ Al-Sanhuri's work consisted precisely in making the old-new juridical life of shari'a preserve the "national" socio-economic order through its articulation into the prevailing legal code and its rationality.

In the new code, Islamic jurisprudence is understood as a set of tangible rules but also as a juridical order that can be assessed against the rationality of European legal systems and whose significance is rendered in the language of European jurisprudence. For al-Sanhuri, besides the specific rules regulating social transactions and interactions produced by Islamic jurisprudence which have been integrated into other legal dispositions, the new Civil Code relied also on "general principles (*mabādi' āmma*)" characterizing Islamic jurisprudence, notably its objectivism (*al-naz'a al-mawḍū'iyya*) that can also be found in German law and can be distinguished from the "subjectivism" of Latin law.

When applying rules coming from Islamic jurisprudence, judges who want to inquire into the latter are instructed to refer first to the previous judicial practice within the Egyptian judiciary system. If this is not available, they should refer to the main usual books of jurisprudence (*al-kutub al-mu'tamada fi al-fiqh*). In the latter case, the judges should not restrict themselves to the dominant opinion of one school, or even to the four main juridical schools of Sunni Islam, and may include the *Zaydi* and the *Imami* schools.

Two important points are implied by these procedures of use and interpretation of Islamic jurisprudence's rules. First, judicial practice systematically prevails over texts of Islamic jurisprudence. Second, as displayed by the integration of Islamic rules within civil law, the reference to Islamic legal normativity is based on what the juridical schools have produced up to the present but never to the sources of shari'a. Yet, it is not a *madhhab* (school)-based form of reasoning, not only because it draws on all the juridical schools, but, most importantly, because the legal rules should be consistent with the Code. Al-Sanhuri encourages judges to rely on rules of Islamic jurisprudence. But they are not authorized to do so if the Islamic rule

contradicts the general rules of the Code because the latter “would lose its consistency and harmony.”³¹ Here, again, the rules of Islamic jurisprudence may have legal force only to the extent that they become part of the legislative and judicial apparatus of the state after they have been assessed against the logic of the Code itself.

In this configuration, and in the time-space of the Civil Code and its enforcement by judges, the role of Islamic scholar-jurists is limited. Although these were consulted during the revision process, it remains the task of the jurist trained in Egyptian state law to choose the rules produced by Islamic jurisprudence that would be integrated into the Civil Code and made consistent with it. Unlike the process of rule-production in the formulation of legal opinions by authoritative Islamic scholars, this normative process is not governed by truth-seeking grounded in the Qur‘an and the Sunna but is driven by its consistency with the Civil Code and the existing rules that it encompasses, which itself is related to the potential power of abstraction and generalization that the jurist, relying on compelling argumentation, may grant to the rule taken from Islamic jurisprudence.

ARAB REASON, TIME, AND THE NEW REAL

For some Egyptian and Arab intellectuals, the economic and geopolitical “failures” of the national and pan-Arab projects of emancipation raised several questions about the “lacks” of the collective self highlighted by the comparison with the West. These needed to be properly addressed for the Arabs to become the masters of their own history. Among the numerous writings dealing with “reason” and “modernity,” the works of two Moroccan writers, Abdellah Laroui and Muhammad ‘Abd al-Jabiri, had considerable influence in the Arab world, particularly in Egypt, as they shaped the terms of the intellectual debate about “Islam” and “rationality” in Arab societies. Although the respective theses of Laroui and al-Jabiri have often been presented as formulating divergent views on the subject, they nevertheless shared a similar language and assumptions about time, history, and the relationship to the Western Other, as well as a deep engagement with both Islamic and European thought.

Laroui’s *The Contemporary Arab Ideology*, published in 1967, exemplifies the way Islamic knowledge produced by Islamic scholars at the beginning of the twentieth century is relegated to the past and considered as a moment of “Arab” thought in a narrative inspired by Hegelian dialectic. For Laroui, the Islamic “reformism” initiated by Muhammad Abduh is only one form of contemporary Arab thought that coexists with the political liberalism formulated by Lutfi al-Sayyid and the technophile’s perspective represented by Salama Musa. All three currents shaped knowledge and politics in colonial and postcolonial Egypt. The ideas produced by these three figures—the cleric, the politician and the technophile—are successive moments in Egyptian, and more generally Arabic thought, that are not only shaped

by questions raised by the West, but are also the reenactment of previous moments of Western history. Hence, "le futur antérieur" is a future that is already written for Arabs, who may know the history to come through the lenses of the Western past and are not free to reject it.

For Laroui, mobilizing Islam as an authoritative voice for the present, as Muhammad Abduh and other Islamic scholars of the beginning of the twentieth century did, was a legitimate response, but it was legitimate insofar as it was a first response to Western colonialism that needs to be overcome because it remains inadequate to the demands of the present. The acknowledgment of the present requires the Arab self to know itself truthfully, which means to acknowledge the way the West is already constitutive of itself. Accordingly, for Arabs the best way to know the collective self is to know the moments of Western history that correspond to the "stages" of development reached by Arab countries.

From this perspective, reclaiming the Islamic past for the present is a vain enterprise that remains a mere call for authenticity for an "empty self" (*un moi vide*). The Arab contemporary self cannot be based on the reinterpretation of classical culture but needs to be built through the objective knowledge of the world-present, notably the acknowledgment of the desire for industrialization as a fact requiring Arab countries to follow the European model. As long as industrialization is not achieved, the authenticity claim grounded in Islam will remain an abstract and empty wish because there will always be constitutive distortions and comparisons with the West in the way Arabs think of themselves.³²

For Laroui, there is no "objective basis," no material facts for the restoration of the preeminence of Islamic knowledge, for they are only "words" that need to be "read, vocalized and interpreted" and "gestures that need to be interpreted." In the present, Islam, grounded in the Sunna, is only one possibility among others, the same way that it was a possibility when it prevailed over the abstract reason of the Mu'tazila. Moreover, the call to authenticity is not the privilege of religion, but may be articulated to other aspects, like language or worldly culture (*ādāb*), that are all signs where the continuity of the self may be postulated.

As for contemporary Islamic scholars and Arab thinkers, the twin questions of (collective) self and time shape Laroui's reflection on the significance of Islam for the "real-present," two generations after the first formulation of "reformist" Islamic thought by Muhammad Abduh. Yet, unlike twentieth century's Islamic scholars, Laroui thinks that the Islamic past has failed to be authoritative for the present not only because the present is already constitutive of these scholars' voice but also because the latter has become one voice among other voices in a time where they are no longer the privileged, if not unique, chain to the past:

Le dogme qui devait garantir l'authenticité et la permanence de notre moi, le voici donc, malgré les efforts du clerc, qui se dissous dans nos choix d'aujourd'hui. Nous sommes tous fils du Présent, aucun de nous ne peut prétendre être le fils aîné et le seul héritier

du patrimoine. Celui-ci est à la portée de tous ; libre à chacun d’y prendre ce qui lui donne équilibre et volonté d’agir (The dogma that used to guarantee the authenticity and the permanence of our self, is, despite the cleric’s efforts, dissolved in our present choices. We are all the Present’s sons, and none of us can claim to be the eldest son and only heir of our cultural legacy. The latter is available to all; anyone is free to take from it what it gives them balance and the will to act).³³

If Arab thinkers and intellectuals rely on “objective knowledge” rather than an “ideological” reading of history, the question of the Islamic past, and more generally any past, as the repository of the self and its authenticity would be much less important, for it would open up the possibility of “universality of reason” understood as the shared future with the West. Oriented toward the future, the self would be much less concerned by the past as a way to preserve authenticity. This rationality requires Arab consciousness to be historical and critical as a way to own “universal history, its methods and its conclusions”³⁴ because the mere call to Islamic authenticity does not change the facts, while “universality” is reconciliation with the facts. Yet, this rationality is not a mere imitation of the West, but mandates that Arabs have “a double critical consciousness” both with their past and the West. This is because their true being is not located in the present (that is already inscribed in the Western past) but only in the future.

The terms of Laroui’s inquiry—rationality, time, the relationship to the Western Other—reflected the main concerns of Arab scholars and intellectuals at the time, but have also shaped the intellectual debate in Arab societies since the late 1960s. These very terms inform the work of another influential Moroccan thinker, Muhammad ‘Abd al-Jabiri, albeit toward a different end. If for Laroui, embracing the “universal” requires emancipation from the past, for Muhammad ‘Abd al-Jabiri modernity should be grounded in the very past of Islam. As formulated in his trilogy published in the early 1980s—*Naqd al-‘Aql al-‘Arabī* (The Critique of Arab Reason), *Takwīn al-‘Aql al-‘Arabī* (The Formation of Arab Reason), and *Bunyāt al-‘Aql al-‘Arabī* (The Structure of Arab Reason)—al-Jabiri’s broader intellectual project wants to give a new life to “Arab reason” and make it “contemporaneous” (*taḥdīth al-‘aql al-‘arabī*). The notion of *taḥdīth*, which may also be translated as “modernization,” is better understood through the temporal lens (which is itself connoted by the notion of modernity [*al-ḥadātha*]), for Arab modernity does not mean that one should forget the past or put aside Islamic knowledge. Rather, as implied by the notion of renewal (*tajdīd*), one should engage rationally and selectively with the past and more precisely, the *turāth* (cultural heritage or legacy), in order to make *present* its rational elements. Yet this renewal, as a way to build the present and the future, is not possible if Arabs do not liberate themselves from blind submission to the authority of the past and the main components of the *turāth*, “language, shari‘a, creed (*‘aqīda*), and politics (*siyāsa*).”³⁵ The task of contemporary intellectuals is precisely to revisit these elements of the

turāth relying on the very reason Arab culture has produced in the past, for, if Arab reason has been alive in the past, it remains a potentiality for the present.

One way to reconnect with the foundational elements of Arab reason is to study its modes of instantiation in the production of knowledge. For al-Jabiri, since the fifth century of Islam, the three modes of knowledge (*bayān*, *ʿirfān*, and *burhān*) that shaped Arab culture in the classical age have been in crisis and were unable to sustain a creative activity in the subsequent centuries. In al-Ghazali's work, gnosis (*ʿirfān*) and demonstrative knowledge (*burhān*) were subjugated to the *bayān* (hermeneutics, producing meaning through textuality), and is displayed in jurisprudence (*fiqh*), grammar and theology (*kalām*). Although it is the *bayān* that still shapes contemporary Arab culture, it is only in the form of "preserving" and "remembering," not as a way to produce thought. Moreover, the hegemony of the *bayān* left no space for demonstrative knowledge, and made Arab reason lose the "the authority (*sulṭa*) that makes it alive, an authority that allows [reason] to impose order on itself and on the world."³⁶ Hence, the renewal of Arab reason requires the lettered to revive demonstrative knowledge (*burhān*) as modeled in the works of classical scholars like Ibn Rushd, Ibn Khaldun, al-Shatibi, and Ibn Hazm. Reclaiming their thought should not lead contemporary Arabs to glorify them or become "alienated" from the present. Rather, they should be relied upon on the basis of the expectations of the present and the future and "the needs of contemporary times" thought (*fikr al-ʿaṣr*) and its logic."³⁷

Al-Jabiri, whose main intellectual project was the critique of "Arab reason," was also interested in shariʿa's relevance for the present. For al-Jabiri modern times, more than any other time, call for a renewal of Islamic legal knowledge through a reopening of *ijtihād*. This is in fact an opening of Arab reason itself (*fathḥ al-ʿaql al-ʿarabī*), for it is the latter that is in charge of the former. In premodern times, it was sufficient to know the Arabic language and other Islamic disciplines (*tafsīr*, *ḥadīth*, and *fiqh*), in a context where the nature of social, economic, and political life remained relatively stable. The "scientific revolution" and industrial civilization, the development of natural sciences as well as social and economic sciences, are among the most important changes that make older procedures of Islamic legal knowledge less relevant for the present. Now, according to al-Jabiri, the majority of Islamic scholars do not have the skills to grasp the science and "thought of contemporary times" (*fikr al-ʿaṣr*), and need to acquire them to be able to perform *ijtihād*.

For al-Jabiri, the task of the contemporary *mujtahid* is to look for and disclose the rationality and reasons behind shariʿa rules (*maʿqūliyat al-aḥkām al-sharʿiyya*), for they were not formulated arbitrarily. These reasons are distinct from what classical Islamic jurisprudence calls the *ʿilla* (ratio legis), formulated on the basis of the Qurʾan and the Sunna and allowing the scholar to know the intent of God the Legislator. Yet, like the attempt of the judge to know the intent of the people in a

courtroom, this form of knowledge is always based on probability (*ẓannī*) rather than certainty. Instead of looking for God’s intent, the method suggested by al-Jabiri consists in establishing that “the good of the people” (*maṣlaḥat al-nās*) or the “public good” (*maṣlaḥa ‘āmma*) is the general goal of shari‘a, which is itself generative of the rationality of Islamic legal rules. For al-Jabiri, the question of the application of shari‘a, often raised in the public space by contemporary Islamic movements, should be corrected on the basis of this generative rationality rather than as a fixed set of rules.³⁸

More specifically, if one takes the example of the corporal punishment reserved to thieves in the Qur’an (chopping off the thief’s hand), the classical jurisprudential method of *ta’līl* would consist in stating that the ‘*illa* (ratio legis) for this rule is the protection of property, but would not tell us why this specific sanction has been chosen among other possible sanctions such as prison. The approach suggested by al-Jabiri, grounded in the *asbāb al-nuzūl* (occasions and circumstances of the revelation), would understand the rationality of the rule in the original time-space of its utterance. It would point out that this specific punishment reserved to the thief existed in Arab society before Islam and was instituted by Islam as a legal rule in a nomadic society as a way to avoid any repetition of the misdeed and to warn the people who may subsequently encounter the thief. Most important, because in a society living in the desert, no other punishments (for example imprisonment) were available, it is not necessary to keep the same punishment in contemporary times.

One should note that al-Jabiri does not suggest here that contemporary Muslims should be “free” from the authority of shari‘a’s foundational texts. Rather, for al-Jabiri, as for some other contemporary Islamic scholars, the “real-present” is constituted as an epistemic problem for Islamic legal knowledge and the task of *ijtihād* is precisely to find a solution to this problem while preserving the authority of the revelation, and most notably the Qur’an. As with the question of the thief’s punishment, it is *temporality itself* that is suggested as a solution to the problem raised by the “real-present,” for what was relevant at the time of the revelation is not necessarily relevant for the present or the future. Here, it is through temporality that the understanding of the social, captured by the historical conditions of its instantiation, determines the relevance of the legal rule enclosed as a textual command in the Qur’an for the present as well as the future.

We saw in chapter 7 that the question of time (or more precisely the “real-present”) was constituted as an epistemic legal problem for contemporary Islamic legal knowledge. However, for most contemporary Islamic scholars, time is generative of legal change in a way that is clearly distinct from al-Jabiri’s approach. It is true that, for them, social change and conditions of time and space necessarily call for a continuous change in legal opinions, and extenuating circumstances may even allow for the suspension of an obligation uttered by the Qur’an. At the same

time, conditions of time and space and circumstances are assessed by the scholar-mufti regarding the case in hand, but usually not on the basis of an alternative formulation of the textual obligation enabled by the understanding of the original context where the command has been revealed (as suggested by al-Jabiri). Rather, accommodations and the suspension of the rule in a case reenact not only the authority of the textual command itself but also the authoritativeness of the text over the context, as well as the preeminence of performativity over the social conditions of the original utterance. Now, these very distinctions (text and context, performativity and social conditions) and the tensions they engender are of course produced by the inquiry of contemporary Arab philosophers and other thinkers into Islamic legal knowledge and the conditions of its production. But Islamic scholars do not consider them to be problems inherent to the limits of textuality itself that would call for a total revision of procedures of truth-seeking as well as the notion of textual truth for legal purposes.

Law and the Shaping of the Self in Contemporary Europe

A central feature of liberalism is the high level of abstraction characterizing the formulation of foundational rules regulating the polity. This abstraction is attached to the structuring universalization principles by which atomistic subjects have equal rights and interact with other free and autonomous subjects. It mirrors, in its Kantian version, the abstraction coextensive to the production of knowledge independent from any empiricity (that is, the Kantian transcendental). As a feature of procedural rationality, universality is instantiated in the figure of the autonomous individual interacting with other thinking and acting subjects on the basis of (abstract) universalizable rules. In the most recent formulations of liberalism such as Rawls's and Habermas's, this is the beginning and the end of the polity, and a guarantee that society's foundational rules are set in an unbiased manner, that is, "blind" to gender, race, class, or religion, epitomized in Rawls's "veil of ignorance." From this perspective, culture and history, as the frames and time-spaces of human collectives, are said to have no role in procedural rationality.

Yet universal liberalism (or put in another way, the liberal formulation of universalism), contrary to its claims, is actually, conceptually and historically, entangled with culture. This could be the one from which it was generated and where it flourished, or the Other's culture studied to shape the colonial production of difference and governmentality, and subsequently, to assimilate (and identify what it is impeding assimilation) minorities in Western Europe originating from the former colonies. In nineteenth-century colonial settings, the study of cultures, instantiated in Islam and Islamic jurisprudence in Muslim societies, embodied in the caste in India,¹ or taking the shape of customary law and ethnicity in African territories,² was part of colonial knowledge and governmentality under liberal rule and ideology.³

Two related constitutive limits of universal liberalism have been underlined by Karl Marx and Hannah Arendt. First, the claim that the non-confessional nature of the liberal state and civil society guarantees the equality of rights and freedoms does not hold because the state and its law are the product of both Christian theology and history. Liberalism does not critically assess the secularized and liberal version of Christianity, and how the latter shapes the legal order, the same way civil society mirrors the pre-existing economic inequalities and the unequal distribution of power among social classes that are actually exacerbated by the “free” rules of competition.⁴ Second, the universality of the rights of man, declared in eighteenth-century Euro-America and circulated in various forms in the nineteenth and twentieth centuries, remained caught in the nation-state’s provincialism, as those rights can only be materialized when attached to citizenship, that is, to the state law that necessarily excludes certain races, groups, communities, minorities, and categories constituting the human from the enjoyment of fundamental rights.⁵

From the liberal perspective, the promise of equal freedom and equal rights could not be achieved in the colonial present because the colonial subjects were not “ready” to be free and autonomous citizens, but needed to be socialized, cultured, and prepared to reach the status of citizenship. Liberal proponents of colonialism saw in the colonial project an extension of liberalism outside Europe rather than a contradiction with its tenets because the inequality of rights was not an essential denial of universality but rather historicized as a temporary requirement, similar to the inequality between a father and his son, or a teacher and a pupil, needed for the colonized subject to qualify for full equality. In that regard, the study of cultures by liberal thinkers of the nineteenth century was necessary to identify what was impeding the universalization horizon, and what needed to be added, corrected, cultivated, and transformed for the colonized to gain the status of the free and autonomous agent.

This contradiction between, on the one hand, the claim to understand the human in the abstract, and, on the other hand, its organic link with specific European cultural forms setting hierarchies between cultures, is the main driver of a twin process of differentiation from, and assimilation of, non-European cultures. This contradiction is foundational in the liberal episteme exemplified by the Kantian transcendental producing the universal-rational and the universal-moral on the basis of procedural rationality abstracted from any substantive and empirical determination, and yet stressing the unique and exceptional cultural and historical conditions attached to European Christianity for a polity guided by rationality to become a historical reality.

This foundational contradiction continues to inform the work of the most influential contemporary philosophers of liberalism. For Rawls, liberalism is the procedural basis for the formulation of universalizable rules that has no substantive or prescriptive content. Rawls relies on the distinction between liberalism

(and his own *Theory of Justice*) as a “comprehensive doctrine” and political liberalism as a “category of the political” by which the polity is organized to enable the formulation of collective rules on the basis of a plurality of views, including divergent comprehensive doctrines, and a set of reciprocal principles protecting basic rights and liberties.⁶ From this perspective, public reason should not be equated with secular reason and secularism (a comprehensive doctrine), as it does not prescribe a particular moral doctrine such as “a first philosophy”⁷ or a religion. Public reason is a rational and reasonable ordering of political values, the language and the set of criteria through which the reasonableness of arguments and rationality of comprehensive doctrines can be judged.

When introducing the notion of public reason, Rawls insists on the distinctive nature of the political that is not equated with the “background culture”⁸ of civil society, but rather refers to the sphere where rules regulating collective life are decided by free and rational citizens regardless of their social, cultural, or ideological identity and preferences. And yet, for Rawls, religions and positions informed by religious views are acceptable in the liberal polity only to the extent that they can pass through the filter of (public) rationality by which “religious citizens” should provide the “right reasons,” deemed “right” from the perspective of public reason,⁹ for their views to be legitimate in the public space and have a role in the formulation of rules and the shaping of the polity.

Similarly, for Habermas, the Kantian “universalization test” is a central procedural tool determining the epistemic validity and moral legitimacy of the production of legal norms. Yet, as we will see in this chapter, in a way very similar to Kant in *Religion Within the Limits of Reason Alone*, Habermas argues that religion has a role in the polity only to the extent that it has been through a process of “modernization” and “transformation of religious consciousness” replicating what Christianity went through during the Reformation and the Enlightenment.¹⁰ While Habermas is interested in the formulation of law in secular societies, he also stresses that the core liberal principles (autonomy, individuality) are infused with meanings of “a Judaeo-Christian origin.”¹¹

In liberalism as practiced by Rawls and Habermas, there is no critical assessment of the contradiction between the claim to abstract universality (supposedly detached from any culture), and its organic link to European cultural forms, cultural hierarchies, power and domination to which it is tied, and what it does to that very claim of universality, particularly as colonization was the most concrete and total instance of universalization driven by liberalism, and shaping a twin process of differentiation from, and assimilation of, non-European cultures.

In colonial settings, this foundational contradiction produced cultural difference as a space of colonial governmentality to constantly reenact cultural and socioeconomic hierarchies between colonizers and colonized. While the European colonial production of difference and alterity was carried to excess and translated

into the production of distinct and unequal legal regimes, contemporary European polities pursue with a similar zeal the opposite end, that is, the production of identity, assimilation, and the negation of difference in the national narratives and shaping of collectives. The Muslim populations born in Europe in the last decades have been required to fully embrace the European civilizational history and identity to be recognized as equal citizens and members of the polity. Liberalism's procedural rationality recognizes them on an individual basis as citizens but does not recognize them as communities and cultures, and does not recognize Islam as a religious and civilizational contribution to the history of Europe. And yet, as studied below, the legislation and the judicial system also define what in Islam is acceptable and compatible with European culture.

Through the study of state law and shari'a in contemporary Europe, it is this relationship between the claim to universality and given cultural forms, between the claim to universalized normative autonomy and the reality of nation-state heteronomy, between procedural rationality and substantive cultural and civilizational prescriptions informing the production of legal norms and the assessment of alternative normative juridical regimes, that I will explore in this chapter.

STATE MORALS AND THE SHAPING OF THE FRENCH SELF

In the twentieth century, following waves of labor migration from the former North and West African colonies planned and organized by France, shari'a and more generally the Muslim "question" became a French "problem" when the North and West African workers' children claimed a French Muslim identity. It was no longer a matter of colonial governance relegated to overseas possessions under distinct juridical regimes for citizens and subjects. Yet it was, and still is, the immigrants' children (*les populations d'origine immigrée*), descendants of the former colonial subjects, that were requested to be "integrated" and "assimilated" into French society. While in the colonies juridical assimilation was expected to be a long and open-ended process starting with dual juridical regimes until shari'a would no longer be relevant (a time that the colonizers "complained" or "deplored" they would never see), it became an injunction to assimilate here and now, fueled by a sense of urgency and the anxiety of a besieged metropole. The law protects both French values and "national unity" from the threat of newcomers. The latter are taught the mores and customs associated with the law and reflecting the national narrative as the former colonial subjects and their descendants are no longer relegated and confined overseas but are now "among us" and "claim to be us."

In 1989, the French Minister of Education requested a ruling from the Conseil d'État (the supreme court dealing with administrative law) as to whether the wearing of signs of affiliation with a religious community in public schools (in this case

the headscarf or veil) is compatible with secularism (*laïcité*) as a principle enshrined in the French constitutional and legislative framework. The Conseil d'État reiterated the tenets of French Republicanism, notably that the freedom of conscience and of religion, and the freedom to manifest one's own religion, are conditioned upon the protection of public order and security as well as others' morals, freedoms, and rights. It added that these freedoms can be curtailed if they contravene pluralism and the content of educational programs. While stating that the wearing of these signs by pupils as part of the freedom of expression does not in itself contradict the principle of *laïcité*, the Conseil d'État ruled that signs, because of their "ostentatious" nature, are forms of propaganda and proselytism that could hurt the dignity and freedom of other pupils or teachers and school employees, and disrupt the schools' order and educational activities. This cannot be tolerated and warrants restrictive internal regulations allowing schools to exclude or refuse the admission of pupils.¹²

In 2004, the French Parliament prohibited the wearing of signs manifesting a religious affiliation in schools with a more restrictive interpretation than the one relied on by the Conseil d'État in 1989. While pupils still have the right to wear "discreet signs," the Islamic veil, the kippah, and any cross "with excessive dimensions" were explicitly prohibited. Because it is the state's duty to protect the individual and collective exercise of the freedom of conscience and to preserve "national unity" from "communitarian claims," the law is meant to protect individuals from pressures related to "ostentatious manifestations" of religious affiliations. The educational institution is required to start a dialogue with the pupils and their parents before starting disciplinary measures, and to explain that respecting the law does not mean "a renunciation of their convictions."

Free, compulsory, and secular, the French public school is an instantiation of republican values, and the space of transmission of these values to the new generations.¹³ In the last decades of the nineteenth century, the public school was also the main battlefield between republicans claiming that the French Revolution's tenets require a complete secularization of education, and those committed to preserving religious education in public schools and more generally the Catholic Church's social and political role in French society. Along with the 1905 law on "church and state," the 1881 and 1882 laws on primary education were the main achievements of the Third Republic, established in 1870 following the collapse of the Second Empire. These laws were the culmination of the long battle for "enlightenment" and "emancipation" from the Church as the public school was now devoted to "moral and civic" education, replacing the "moral and religious" education that defined primary school throughout the nineteenth century. For Jules Ferry, one of the main initiators of the legislation, "religious neutrality" is a result of "a secularization of the school," and requires a separation of the domain of "beliefs" ("free, personal, and changing") from "knowledge" ("necessary and shared"). Ferry instructed

teachers to act as an alternate to the good father of a family, teaching inherited ancient moral values like the sense of duty and obedience.

Durkheim was one of the main proponents of the teaching of secular morals as the main discipline defining French republicanism. While Durkheim describes a historical process of rationalization of religions' moral teachings, culminating in Christianity and the Reformation by which morality became autonomous from worship, he advocates a secular and "rationalist" moral education with no reference to any religious teachings, based exclusively on "ideas, feelings and practices that can be justified by reason alone."¹⁴ And yet, for Durkheim, secular moral standards cannot be merely defined negatively as a set of principles and values emptied of their religious origin, as there is a risk that they will lack substance.

As exemplified by Durkheim's writings on secular morals, French secularism is not only the result of anti-clerical history or an attempt to organize a neutral space for all beliefs and religions to coexist; it is also an attempt to prescribe a set of values, principles, memories, and emotions associated with republicanism. Yet, as with Rousseau's civil religion, Durkheim's definition of secular moral tenets requires a good understanding of religion's role and social functions, as these tenets are expected to fill the same needs.¹⁵ Secular morals are set in opposition to religion to the extent that they mirror and emulate it. Durkheim's *Elementary Forms of the Religious Life* studied the similarities, if not the identity, between religion and society as society became self-conscious of itself through religion. He asked, "if the totem is the symbol of both the god and the society, is this not because the god and the society are one and the same?" And he argued that "society in general, simply by its effects on men's minds, undoubtedly has all that is required to arouse the sensation of the divine."¹⁶

Yet, while Durkheim's sociology insists on the integrative and holistic force of both religion and society and refers to the organic link between society and morality, his political preferences and prescriptions during the debate on education in France are based on a voluntarist moral project shaped by the state with new symbols and rituals rather than the result of the unconscious play of social forces. To put it in Durkheim's sociological language, it is as if the secularization process remains incomplete without a new formal moral code, and needs to be complemented with the state's robust intervention to succeed in making the transition from mechanical solidarity to organic solidarity and protect individuals from anomia. Secular morality cannot be taught in reference to an abstract humanity but rather should be a socialization process addressing "the men of our time and our country," as public schools nurture, preserve, and protect the "national type"¹⁷ reflected in and guided by the patria, the most highly organized form of society with a distinctive political character.¹⁸

The Durkheimian moral project exemplifies the paradox of French secularism claiming to emancipate the individual from religious authority, and yet requesting

the individual to submit to moral heteronomy defined by the state. As an emanation of society, the state and its law can be a vehicle of the socialization process. It is the state's responsibility "to work out certain representations which hold good for the collectivity" characterized by their "higher degree of consciousness and reflection."¹⁹ This heteronomous moral project, consistent with Durkheim's sociological understanding of morality as socialization, is also a moralization process by which society is present within, and becomes coextensive with, inner selves and individual conscience. "Elle n'est pas tout entière en dehors de nous, elle est aussi en nous. Elle n'est vraiment réelle et vivante que dans les consciences particulières" (Society is not entirely external to us, she is also within us. She is truly real and alive only in the individual consciences).²⁰

The critique of Kantian moral autonomy was the starting point of Durkheimian social theory. In *The Division of Labor* as well as in *The Moral Education*, Durkheim discusses Kant's moral theory at length, and underlines the failure of any attempt to formulate an a priori definition of morality. Durkheimian moral theory is an inversion of Kant's "metaphysics of morals," moving from moral autonomy to moral heteronomy, from transcendentalism to empiricism (the "moral facts" are the object of study), and from subjective freedom to social determinism. And yet, Durkheim relies also on the Kantian subject. In order to theorize the new domain of the social, he needs to posit the free rational and sovereign individual from which "society" is distinguished.

Durkheim dislodges morality from the autonomous (Kantian) subject to relocate it in "the social," which emerges as the encompassing space of an almost non-existent individual agency in the holist European sociology of the late nineteenth century. The subordination of the individual to the social whole is the condition of any possible morality. The moral is conflated with the social, for Durkheimian solidarity necessarily de-centers the individual from himself and subjugates him to the relation with the other in a state of mutual and organic dependency rather than subjective autonomy: "Everything which is a source of solidarity is moral, everything which forces man to take account of other men is moral, everything which forces him to regulate his conduct through something other than the striving of his ego is moral, and morality is as solid as these ties are numerous and strong."²¹

The moral, like the social, is circumscribed by Durkheim in a relationship of exteriority to the individual who is subjugated to its rules: "Morality as a system of rules, external to the individual which impose themselves on him from outside."²² Society, like the Hobbesian state, is not a mere aggregation of individuals but has its own "personality," which is paradoxically constituted by them, and yet autonomous from and exterior to them. The contribution of individuals is infinitesimal and can only be grasped over time and through the work and succession of generations. That is why morality is not an internal product of the individual subject, and is imposed upon him from the beginning by society: "The morality for our time is

fixed in its essentials since the moment of our birth.” For Durkheim, contrary to the Kantian autonomous will of the subject, “the individual will seems to be controlled by a law not of its own making. It is not we, in effect, who create morality.”²³

Durkheimian social heteronomy is obviously not a “return” to the theological heteronomy of Christian medieval thought, but a reformulation of the relationship between external behavior and inner self in a new epistemic context in which knowledge is mediated by the new science of man that emerged in Europe. For Durkheim, secularization and the transition from “traditional” society to “modern” society is not characterized by a change from moral heteronomy to moral autonomy. Rather, it is a shift from one kind of moral heteronomy to another. In the organic solidarity type of society, collective conscience becomes more general and religious belief more “transcendent.” As the division of labor progresses, society becomes increasingly based on “individual variations” that are related to the growing specialization in different social activities and “functions.” It gives birth to a form of collective life in which individuals are not independent from each other, but remain subjugated to moral heteronomy through a “complex” system of obligations and “restitutive” justice.²⁴

The heteronomy of morality is also displayed in the relationship between ethics and law in Durkheim’s work. If the study of ethics can be raised to the dignity of a science, it needs to be “measurable,” which would make tangible and available to the eye of the sociologist the almost invisible morality. Durkheim finds in the law “the *external index*” and “the *visible symbol*” of the impalpable morality. Morality is sometimes conflated with the law when Durkheim comes to define the two concepts, for both consist in the combination of rule and sanction: the domain of morality encompasses “all the rules of action which are imperatively imposed upon conduct, to which a sanction is attached, but no more.”²⁵ The law “can be defined as a rule of sanctioned conduct.”²⁶

However, the process of modernization and individualization may lead to a state of anomia, where individuals are lost. In the modern context, people need a new morality that is neither the metaphysical a priori morality of the Kantian philosopher nor a religious morality. This new morality already exists in social reality but remains unknown to those who live in a state of anomia, or who think that modern society is a-moral. Echoing Durkheim’s public positions during the debate on education in France recommending the scientific formulation of secular morality under the state’s patronage, *The Division of Labor in Society* underlines that this new morality requires the work of the sociologist to be unveiled and made available to the rest of society (“our first duty is to make a moral code for ourselves”²⁷), for the science of the social is also “the science of ethics.” Sociology may have a moral role when it succeeds in reconciling science with ethics, and understands its task as an extension of the field of conscience; “science is nothing else than conscience carried to its highest point of clarity.”²⁸ But here, conscience is referring less

to the subject's interiority than to the collective social-moral, for the former is almost a mechanical reflection of the latter.²⁹

REVISITING THE *FORUM INTERNUM* AND *FORUM EXTERNUM*

In European political forums, notably the European Parliamentary Assembly, shari'a understood as a distinct totality, and as a set of material prescriptions of Islamic jurisprudence informing judicial practice, is deemed incompatible with Europe's foundational legal rules and principles. In its Resolution 2253, adopted in January 2019, the European Parliamentary Assembly stated that it is "greatly concerned about the fact that sharia law . . . is applied, either officially or unofficially, in several Council of Europe member States,"³⁰ reiterated its request to Greece "to abolish the application of sharia law in Thrace," and stressed its concern regarding "the 'judicial' activities of 'sharia councils'" in the United Kingdom. The European Parliamentary Assembly's Resolution 2253, and more generally European decisions and positions about shari'a and Islam, refer to the European Court of Human Rights's judgment *Refah Partisi (The Welfare Party) and others v. Turkey*.

In 2003, in response to a request by leaders of the Refah Partisi contesting the dissolution of their party by the Turkish Constitutional Court in 1998, the European Court of Human Rights (set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights), confirmed the Turkish judiciary's decision. The European Court stated that "a plurality of legal systems cannot be considered compatible with the Convention system, as it would introduce a distinction between individuals based on religion and thus, firstly, do away with the State's role as the guarantor of individual rights and freedoms and the impartial organiser of the practice of different religions and beliefs." The European Court underlined that "the application of sharia within the context of such a plurality of systems" is incompatible with the fundamental principles of democracy (notably pluralism and public freedoms) and the values enshrined in the European Convention of Human Rights. The European Court added that the application of "sharia's private law rules to the Muslim population . . . goes beyond the freedom of individuals to observe the precepts of their religion." For the European Court, "freedom of religion, including freedom to manifest religion, is primarily a matter of individual conscience and the sphere of individual conscience is quite different from the field of private law, which concerns the organisation and functioning of society." For them, "any State may legitimately prevent the application within its jurisdiction of private law rules of religious inspiration prejudicial to public order and the values of democracy."³¹

One should note here that the European Court of Human Rights, while upholding a supranational normative system, does not recognize the possibility of plural

normative regimes and legal rules derived from religious teachings, and stresses the distinction between, on the one hand, the “private sphere” where individuals are allowed free belief and religious practice, and on the other hand, “private law” that is part of the “public order” and under the state’s direct purview. Article 9 of the European Convention of Human Rights, while affirming “the right to freedom of thought, conscience and religion,” enables states to subject the latter to “limitations . . . necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”³²

The old distinction between *forum internum* and *forum externum* (studied in chapter 10 and 11) remains central in the legal interpretation of article 9 of the European Convention of Human Rights and has been used in several judgments of the European Court of Human Rights. While the canon law distinction between the two forums was part of the Christian episteme reflecting sacerdotal and jurisdictional power dealing with inner selves and bodily deeds under the higher end of salvation of souls, it became the main legal basis by which the state, in a Hobbesian fashion, authorizes itself to regulate and limit manifestations of religion and beliefs that could harm “public safety” and “the public order” while claiming to protect the freedom of conscience and religion. In this legal framework, the European Court of Human Rights privileged a passive understanding of the *forum internum* as “a right not to disclose one’s religions or beliefs” (*Sinan Işık v Turkey*) requiring protection.³³

The cases related to shari‘a and the plurality of normative regimes entailing the distinction between *forum internum* and *forum externum* brought before the European Court of Human Rights raise a more fundamental question about the status and (re)institution of law as the foundational gesture defining European supranational political identity. Since the 1990s, following the reunification of Germany, Habermas has been advocating for a more ambitious European project, and in 2001 defended the idea of a European constitution that would build on the constitutional moment of the eighteenth century and “conserve the great democratic achievements of the European nation-state, beyond its own limits,” enabling “effective private autonomy” and “democratic citizenship.” This requires, for Habermas, that Europe disentangles her identity from its global successes, that is Christianity’s expansion, “the global spread of modern science and technology, of Roman law and the Napoleonic Code, of human rights, democracy and the nation-state.”³⁴

SHAPING THE POLITY: FREEDOM, MORALITY, AND EFFECTIVENESS OF THE DISENCHANTED LAW

The law, and the legal norms’ power to shape the polity while instantiating individual and collective freedoms, are at the heart of Habermas’s thinking on Europe, underpinned by his earlier philosophical work on *Facts and Norms*. The relation-

ship between coercion and freedom is the constitutive duality of modern law in the liberal state contemplated by Habermas building on the philosophers of the contract. Modern law encompasses both “enforceable laws” and the “laws of freedom”³⁵ by which the law is both a material reality and a concept. It overlaps with another relationship, between the validity of legal norms (legitimate and accepted by subjects of law) and their facticity (compelling and enforced) as in liberal societies, as those norms are an act of freedom, and their acceptability entails their ability to protect and reflect freedom. Yet the law, as an instantiation of freedom, needs to be enforced by the state to make it a material reality, as it “equips validity with the force of the factual.”³⁶

As with many European legal and political theorists, Habermas’s narrative refers to the origins of modern state law as a foundational epistemic shift, reflecting and enabling a new meaning of “the law” whose unprecedented language of equality and freedom captured in the metaphor of the contract shapes the polity’s self-representation. The language of the law is also the vehicle of its procedural and substantive rationality guaranteeing liberties. In this genesis, the law is both an act and a medium of reason and freedom.

While recognizing the possibility of a hierarchy of legal norms under the authority of a higher law (the “Christian natural law” administered by the Church), Habermas is interested only in “the modern situation of a predominantly secular society in which normative orders must be maintained without metasocial guarantees.”³⁷ In modern and increasingly complex societies, the law has been “disenchanted” and no longer reflects a supra-normative order. Individualization and the pluralization of forms of life and socio-cultural background within the same political community mean new representations about the law and require new forms of lawmaking.

The main problem that emerges from the shift to modern society is that this plurality of forms of life cannot translate into corresponding juridical regimes, as it is assumed that there can be only one law regulating a given socio-political community. Paradoxically, while modern society reflects and enables a new political grammar of freedoms, preferences, and choices, the law, as the nation-state’s language, is a homogenizing instrument of power claiming and framing general and universal rules. The pluralization of lifeworlds cannot translate into a plurality of normative regimes, as these lifeworlds inform inter-subjective and institutional communicative practices determining the (only) legal rule on a specific issue by which agreement is possible. Hence, this pluralization does not mean social disintegration, because modern law is the medium and instantiation of “social integration” enabled by, and reflected in, the contractualist “unification” of the will (or free choice) of one person with the will of another.

Revisiting Hobbes, Rousseau, and Kant, Habermas explores the relationship between coercion and freedom as the law is constituted by, and giving shape to,

subjective rights and freedoms that are protected by state coercion and authorizations to take legal action. The contractualist society cannot accept mere obedience to the law enforced by the state (the law's facticity), as its foundation is based on a rationality requesting, assessing, and formulating valid and acceptable reasons for the recognition of and submission to the law as a legitimate normative regime.

Rationality in liberal states encompasses individual rights and freedoms whose formation, exercise, and protection is predicated upon the inter-subjective acknowledgment by each of the same rights and freedoms to all other subjects in the collectivity.³⁸ However, this process does not merely consist in expressing views and beliefs supporting or rejecting norms, as it requires a rational procedure by which reasons assess those views. These reasons are the "currency used in a discursive exchange that redeems criticizable validity claims."³⁹ However, reasons do not refer only to what motivates the views of individuals and communities and what is meaningful, but involves an epistemic judgment as to whether these verbal preferences are true: "Reasons owe their rationally motivating force to an internal relationship between the meaning and the validity of linguistic utterances." It is this procedure that allows for the "justified acceptability" of views informing the formulation of norms, rather than the "mere acceptance" of unquestioned beliefs.⁴⁰

For Habermas, the shift from a society under the authority of "a higher" and "sacred" law infused with morality to a society regulated by modern state law does not translate into a total separation of law and morality. Rather, it is a shift from the inherited and unquestioned supra-normative order to a society regulated by procedural rationality in which law and morality are both shaped by critical examinations and communicative practices. As Habermas is interested in the conditions under which enforced modern law (facticity) can claim, at the same time, to be acceptable for the addresses of law (validity), then law and morality are not necessarily opposed to each other.

The difference between law and morality brought about by modern political theory has less to do with the distinction between the "is" and the "ought" (as facticity and validity are entwined in the law) than it has to do with distinct effects on action. When compared to law, morality has very limited effects on action as it lacks facticity. As an institutional order underpinned by systematic cultural knowledge and doctrine, the law is a powerful normative order. It is more effective than morality, since it is suited for the "functional requirements of a complex society," particularly economic societies based on "decentralized decisions of self-interested individuals" in which the law, through communicative practices, operates as a source of social integration.⁴¹

In the broader moral sphere, Habermas reformulates the distinction between the ethical, associated with self-realization, and the moral, related to self-determination. The heteronomous model of the "good life" is no longer relevant as individuals are interested in self-realization informed by a new understanding of

interiority. Self-conscious, the individual examines her own life history guided by existential decisions. The same is true for the collectivity, which is no longer making sense of the world guided by religion but rather on the basis of history and hermeneutics.

Habermas subscribes to the narrative of modernity as the process of differentiation and separation of distinct spheres, including the cultural and institutional separation of law from ethics. Yet, in *Between Facts and Norms*, both law and morality, as forms of knowledge, deal with the normative justification of "interpersonal relationships" and "coordinated actions" through an intersubjective process. In contrast to morality, the law has "a binding character at the institutional level," as it is not only "a symbolic system but an action system as well."⁴² In the regulation of collective life, moral norms do not come prior to legal rules, nor do moral rules have a higher normative value than legal rules. Rather, under the general category of "norms of action," moral and legal norms entwined with moral and civil autonomy are "co-original."⁴³

In liberal democracies, autonomous morality is based on reason and deals with correct judgments only. While this "principled" and "post-conventional" morality depends on "socialization processes," it is not primarily interested in cultivating dispositions to act morally, as their "internalization in the personality system" is too uncertain and limited to be effective.⁴⁴ Rather, it is through legal institutionalization, and to a certain extent alongside internalization, that moral norms can structure collective action.

At the same time the justification of legal norms is not limited to moral reasons alone but includes also ethical (reflecting a collective form of life shaped by shared traditions and values) and pragmatic reasons (in a complex society where state administration and the economy require a specific set of regulations). Only norms that pass the universalization test within the same political community are acceptable: "Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses."⁴⁵ Universalization, as a moral principle, is also a rule of argumentation structuring the citizens' communicative action and their participation in the discursive process shaped by "illocutionary obligations." Democratic political systems should enable and shape the institutionalization of communication between participants in a will-formation process.

Following Kant, the law, as a form, is abstracting the formulation of rules both from individuals' internal motives to follow those rules and from ethical considerations related to the lifeworld, as it deals only with external behavior. However, for Habermas it is not a limitation of morality. If "the principle of democracy derives from the interpenetration of the discourse principle and the legal form" understood as "a logical genesis of rights,"⁴⁶ there is an interpenetration of morality with law through the discursive process of reciprocal recognition and co-production of rules applicable to all.

Instead of being a loss, the differentiation between law and morality and the institutionalization of the production of legal rules within representative political democracies relieves individuals from cognitive, motivational, and organizational burdens. Persons are not required to form moral judgments determining collective life in representative systems. With the uncertainties associated with the sense of duty and the inclination to act, it is the enforced law that ensures the conformity of behavior. In complex societies requiring coordination and based on the development of new legal subjects such as corporations and associations, moral action can be achieved through “anonymous networks and organizations” like charities.⁴⁷

LAW AND RELIGION IN CONTEMPORARY LIBERAL SOCIETIES

Habermas started to address more extensively the role of religion and religious practices and norms in liberal societies in the context of the “political revitalization” of religion in the West. He asked whether this is compatible with the constitutional state and its “ethics of citizenship” formulated by Rawls. For Habermas, there is, in modern liberal societies, a deep divide between religious and secular worldviews, informing the difficulty of defining common rules regulating collective life for all citizens that requires agreement on a shared understanding on how collective norms should be produced. However, religion as “a problem” has less to do with the production of norms than with an epistemic process by which individuals from distinct faith and cultural backgrounds cooperate after having been through a learning process. This cannot be settled in the liberal state institutionally and normatively, through law and politics alone, but requires an *inner work* from both communities and individuals making themselves available for “learning processes” and adopting “self-reflective attitudes on which the democratic ethos hinges.”⁴⁸

In the self-understanding of the constitutional state theorized by Habermas, the state is necessarily secular, and religious doctrines cannot be accepted as the narrative legitimizing its existence, form, and constitutive practices. Rather, the use of “common human reason” and the formulation of public arguments are the “epistemic base” of the state in the Western contractualist tradition, which translated institutionally into the separation between Church and state. The secular state, notably in response to the European religious wars, protects positive religious freedom (the ability to practice one’s own religion) and negative religious freedom (“to remain spared of the religious practices of the others.”)⁴⁹ However, the legal protection offered by the state does not suffice as it requires reciprocal engagement between citizens holding divergent worldviews to reach agreement on what counts as religious freedom. Hence, the distinction between acceptable and intolerable religious practices in liberal societies requires an assessment by all

parties of the “compelling reasons” mobilized to endorse or reject rules that all sides can agree to.

Habermas’s position on religions is informed by Rawls’s “provisio of translation” of religious views into secular reasons.⁵⁰ For Rawls, the participation of “religious citizens” in the formulation of collective rules and the status of rules inspired by religious views is not co-extensive to the liberal polity. These views should be assessed against their rationality, taking into consideration the reasons invoked to support these positions. Political decisions, reflecting the reciprocity principle and respect for basic liberties, should be acceptable to all free and equal citizens who are cooperating on the basis of “civic friendship.” Religious views are the expression of “comprehensive doctrines” usually associated with the idea of “whole truth” under which reasons cannot be shared and reciprocated by all citizens.

Hence, from Rawls’s perspective, the “whole truth” is not compatible with political liberalism and the liberal conception of justice based on deliberative reason, and “comprehensive doctrines” cannot be introduced as a basis of public reasoning without any mediation or filter. Citizens attached to comprehensive doctrines, religious or non-religious, can participate in the collective deliberative exercise if they give “properly public reasons” to support their doctrines’ principles. Religious citizens cannot refer to their understanding of religious tenets to justify a proposal regarding a constitutional or a legal rule. Instead they need to translate those tenets into reasons acceptable to all citizens; Rawls’s term for this “injunction to present proper political reasons” is “the proviso.”⁵¹

While building on Rawls’s “ethics of citizenship,” Habermas seeks to go beyond the Rawlsian proviso of translation of religious rationale into secular language as the main filter rendering initial religious positions acceptable in the public sphere regulated by the public use of reason and “the duty of civility.” Habermas believes that the proviso is “an asymmetrical burden” on religious citizens and should be revisited to restore equality between citizens when it comes to the amount of effort required to have one’s own reasons heard in the public sphere.

For Habermas religion, if understood sociologically and philosophically, contributes to the production of meaning and the shaping of identity, as religious views may include “possible truth contents.”⁵² This is especially true in the trajectory of Western philosophy in which key concepts (autonomy, individuality, emancipation) are infused with meanings of “a Judaeo-Christian origin.” However, as exemplified in the history of religion and the transformation of “religious consciousness” in the West since the Reformation and the Enlightenment, the acceptability of religion in liberal societies requires each religious community to do the work of “dogmatic processing of the cognitive challenges of modernity.”⁵³ New epistemic attitudes expand the religious individual’s “universe of discourse” to acknowledge other religions and worldviews. Religious people must recognize the “institutionalized monopoly of science” over knowledge of the world, and the

acceptance of the primacy of secular reasons in the formulation of legal and moral norms regulating the socio-political order. This learning process from within each religious tradition should enable “a reconstruction of sacred truths that is compelling for people of faith in the light of modern living conditions for which no alternatives any longer exist.”⁵⁴ The acceptance of these new formulations of religious truth by “the true believer” remains the final criteria by which one can assess whether this attempt to modernize a given religious tradition has been successful.

At the same time, for Habermas, secular citizens need also to commit to “civility” in “a post-secular society” in which religious citizens are allowed to articulate their reasons (provided that, as seen earlier, they commit to *internal* transformation and the translation proviso). The symmetrical distribution of effort among citizens requires also a learning process for secularists who perceive religion as “archaic” and those who, being “paternalistic,” do not take religious convictions seriously. Exemplifying the processing of “cognitive presuppositions” required for the public use of reason, “post-metaphysical thought,” while reenacting a categorical distinction between faith and knowledge, recognizes the possibility to learn from religion, including by acknowledging the contribution of (Western) religions in the genealogical history of reason.

While Habermas is inheriting and revisiting the Kantian conceptualization of law and ethics, he is not relying on a sharp distinction between the *external* domain of juridical norms and the *internal* space of ethics. Rather, both moral and juridical norms are formulated at the junction of the internal and the external in the discursive exchange taking place in the public sphere. On the one hand, as a reader of Durkheim grounding his philosophical conceptualization on an anthropological understanding of social reality, Habermas acknowledges the internalization of moral norms through socialization. On the other hand, as a theorist of liberal rationalism, these moral norms should always be critically examined and questioned verbally through the collective inter-subjective communication process. In addition, while a conceptual distinction can be made between law and morality, in their processual intertwining citizens are both authors and addressees of norms that are simultaneously moral and legal.

Habermas's *Facts and Norms* remains the most influential and the most comprehensive European account of the relation between law and morality, and what it means for religious worldviews. It distinguishes between on the one hand, religions that are perceived as “internal” to and constitutive of European identity and history, and coextensive to its philosophical and institutional arrangements between law, ethics, and religion, and, on the other hand, those that remain foreign and alien to these arrangements, history, culture, and identity.

It becomes clear that in this view shari‘a norms cannot be recognized, either as a juridical or a moral normative regime, because shari‘a cannot pass the critical examination and “universalization” tests. Shari‘a also cannot be recognized as a

normative source for a particular community or individuals wishing to live according to those norms because, under the regime of the nation-state, there is no room for a plurality of normative regimes. In a polity constituted by free and autonomous citizens in which addressees of the law are, at the same time, authors of the law, individual subjects should not submit to any kind of heteronomy even if it is their own choice, because they can no longer share with the other members of the polity the same epistemic language and attitude. Hence, Muslims can be full citizens of a European liberal nation-state only to the extent that they go, collectively and individually, through a process of modernization of religious consciousness, notably recognizing that the knowledge of the world can only be produced by science, and acknowledging the primacy of secular reasons in the production of moral and legal norms. With a “modernized” religious worldview, Muslims can take part in the collective discursive formulation of norms because they would be able to fulfill the translation proviso and enunciate valid reasons that have already been epistemically filtered by modern knowledge.

With Habermas, it is not only the manifestation of religion contesting the Hobbesian state’s monopoly over lawmaking and disrupting the public order that cannot be tolerated, it is also the collective and individual transformation of *inner beliefs* that is expected from those who do not share the actively engaged citizens’ cultural and civic tradition. This shaping of the inner self is very similar to the requirements of Rousseau’s general will (revisited through the inter-subjective communicational and discursive process) and civil religion (revisited through the requirements of modern science and secular rationality) for a citizen to be a legitimate member of the polity.

Similarly, for Rawls, a religion is acceptable in a liberal democracy only to the extent that it supports the foundational principles of democracy and political justice for *the right reasons*. While claiming to ensure equal freedoms and respect for citizens’ autonomy, the Rawlsian concept of public reason entails the assessment of these individuals’ own reasons in order to decide whether they are compatible with the set of reasonable reasons acknowledged and endorsed by political liberalism. It does not suffice that religious doctrines merely accept democracy, as the reasons justifying this acceptance should be put under critical scrutiny. A religious citizen fulfilling his civic duty is expected to rely on “a reasonable judgment” both as a public citizen and as a religious man.⁵⁵

Paradoxically, then, while instituting the distinction between private man and public citizen, the liberal state conceptualized by Rawls does not stop at the boundaries of the personal domain but is also mandated to assess whether the individual’s *inner beliefs* are fit for public reason and democracy: “Here it is basic that public reason is a political idea and belongs to the category of the political. Its content is given by the family of (liberal) political conceptions of justice satisfying the criterion of reciprocity. It does not trespass upon religious beliefs and

injunctions insofar as these are consistent with the essential constitutional liberties, including the freedom of religion and liberty of conscience.”⁵⁶

Determined by the visible world as grasped by the Enlightenment and modern science, the epistemology of Habermas and Rawls leaves no room for alternative epistemic regimes in which the unknown and the unseen are acknowledged dimensions of the world in which Westerns and non-Westerners, Muslims and non-Muslims alike, live. There is no space for a complex and sophisticated understanding of shari‘a based on the plurality of Islamic disciplines because the latter cannot be recognized as knowledges proper but are relegated to “religious beliefs.” This is true not only for the Islamic episteme but also, for example, when it comes to an alternative relationship to nature not confined to the dualisms subject/world and culture/nature, in which human communities live and interact with the non-human.⁵⁷ The possibility of alternative knowledges and how they shape life-worlds is not taken seriously by neither Rawls nor Habermas as modern science, has, according to them, an “institutionalized monopoly” over knowledge of the world. Hence, while inter-subjective communication is central in Habermas’s conception of the collective, other forms of knowledge are actually not worthy of consideration as a way to understand the Other, whether internal or external to Western societies. Claiming to offer the possibility for “minorities” to take part in deliberative practices regardless of their cultural background, Habermas’s polity is actually preempted by a unilateral (epistemic and legal) language that never questions its own relevance nor the pertinence of modernism and scientism, and does not even consider the need to shape a new common language for (cross-cultural) communicative practices to effectively happen.

SHARI‘A AND THE SECULAR STATE

While the question of shari‘a is not directly addressed by Rawls and Habermas in their theorization of state law in liberal polities, we can see that it is nevertheless present through the broader question of the religions’ compatibility with requirements of freedom and equality of individual rights. It is also present as the negative Other of the European trajectory of law and religion, as the latter is theorized by Habermas and Rawls as starting from its Western Christian history and requiring other religions to be aligned with the same forms and arrangements. While informed by Rawls and Habermas, Abdullahi An-Na‘im’s *Islam and the Secular State: Negotiating the Future of Shari‘a* can be understood as a reversed exercise, theorizing secularism starting from Islam in Muslim-majority countries (as well as countries with important plurisecular Muslim minorities, such as India) rather than from its European-Christian context.

Addressing primarily Muslims while also having a conversation with non-Muslims, *Islam and the Secular State* is an argument for secularism formulated from

the Islamic perspective. For An-Na'im, the secular state can better serve the purpose of shari'a (and more generally Islamic principles) for Muslims than can the Islamic state. Within the framework of constitutionalism and human rights, the secular state allows Muslims to claim shari'a-based rules and policies under the condition that their position is not formulated merely because it is prescribed by religion but on the basis of reasons that can be not only acceptable to Muslims who hold different religious views on what the prescription should be on the same matter, but also to Muslims who do not want to commit to religious teachings and to non-Muslims.

While relying on political liberalism's principles (constitutionalism, human rights, and civic reason) that are similar to the ones formulated by Rawls and Habermas, An-Na'im is not advocating for a secular state to confine religion in the private sphere, but rather to enable religion to fulfill its public function within the liberal political framework. Shari'a's moral purposes will be lost in an "Islamic state" claiming to enforce Islam, as this state will be captured by one dominant group deciding on the basis of its own interpretation of shari'a. In contrast, a secular state, because of its religious neutrality, can shape the public space for religion to have a political role without being used coercively by the state, as religious freedom and the non-enforcement of religious rules protect the moral meaning and purpose of religion.⁵⁸

For An-Na'im, the "shari'a point of view" can be better developed in the public space shaped by the secular state ensuring that all interpretations and views, including those deemed "heretical," are freely expressed. In this regard, human reasoning in relation to shari'a (*ijtihad*) is no longer an exclusive prerogative of Islamic scholars but a responsibility of each Muslim that could be the basis of new forms of consensual agreement (*ijma'*) by which the dominant jurisprudential views can be reformulated in relation to constitutionalism and its reciprocal rights and freedoms.

An-Na'im argues that in fact there has never been an Islamic state, as there has always been a differentiation between political and religious authorities, except at the time of Muhammad's prophecy. However, while the state was not Islamic in precolonial times, it was not "religious neutral," as it was claiming to be "Islamic" and providing the conditions under which shari'a rules could be implemented without recognition of equal rights between Muslims and non-Muslims. As understood by classical jurists, the state was a temporal institution exercising power on behalf of Islam. Under the Mamluks, the caliph became mostly confined to a ceremonial role, often subjugated to the sultan who was the real power-holder. Islamic scholars were relatively autonomous from the state but were also requested to provide religious legitimacy to the rulers, particularly at the time of succession.

In *Islam and the Secular State*, secularism is an attempt to provide a basis upon which shari'a is lived as a free choice, guaranteeing the "freedom to disbelieve" within a framework separating religion from the state while connecting Islam with

politics. It is less an argument for secularism as an end in itself than a means through which “the liberating role of shari‘a” can be restored as part of a revised liberalism that would no longer be associated with the West but would be formulated from an Islamic perspective while enabling non-Muslims to participate in its framing. When dealing with India, Turkey, and Indonesia as three instantiations of secularism in Islamic context, An-Na‘im therefore advocates for an improvement of the secular state’s practical arrangements to be consonant with equal rights and liberties and the reciprocity principle, including on the basis of its Islamic version (*mu‘āwada*). If secularism should be a forum for mediation and negotiation between individuals and communities claiming distinct traditions and beliefs, French *laïcité* is the counter-example of An-Na‘im’s secular arrangements, as the former excludes several communities from the exercise of civic reason and leaves no room for religion to have a public role.

An-Na‘im’s work is focused on institutional and legalistic arrangements and is informed by modern legal categories assuming a clear distinction and separation between, on the one hand, the public and constitutional domain and, on the other hand, religion and the private sphere. His earlier book *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* studied the extent to which “historical shari‘a” can be applied in the public domain. This meant a “modern version” of shari‘a taking the shape of “Islamic public law” understood as the sphere of constitutional order, criminal justice, international relations, and human rights distinct from “religious practice” and “private or personal law.”⁵⁹ While An-Na‘im does not explicitly reiterate the linear secularization narratives of Rawls and Habermas, he nevertheless expects, in a way similar to Habermas’s take on religion, that Islamic reform will provide Muslims with the “psychological motivation” and “sociological ability” to participate in civic reason, and will allow the “internalization” of human rights culture. It would mean a “transformation” of Muslims’ understanding of shari‘a, through which Islamic notions tied to their premodern meaning such as *Shūrā* (collective consultation) and associated with liberal political arrangements can be reformulated in relation to representative democracy to reflect constitutionalism, human rights, and equal citizenship.

In other words, An-Na‘im, echoing Rawls’s and Habermas’s conceptions of religion and law, relies on a legalistic understanding of shari‘a. Because he does not differentiate between distinct knowledges of shari‘a, and does not address the relationship between jurisprudence (*fiqh*) per se, and other shari‘a disciplines (*kalām*, Sufism, philosophy), he reiterates a narrow understanding of shari‘a caught in the judicial and the legal. This cannot enable shifting the conversation into the other central components that can inform the understanding of shari‘a for both Muslims and non-Muslims, and what it entails in terms of the jurisprudential and legal frame in contemporary polities.

Islamic Reason

RAISING THE QUESTION OF REASON IN ISLAM

The question of reason and rationality has informed contemporary representations about shari'a in both Western scholarship and the writings of modernist intellectuals in Muslim societies since the end of the nineteenth century. Shari'a occupies the space formerly occupied by the Jewish law in Christian and secular European writings up to the twentieth century; Judaism was represented, for example in philosophical writings by Kant and Hegel, as "the slavish obedience to statutory laws."¹ Shari'a, like the *Halakha* in pre-twentieth century Western writings, is represented in contemporary writings as requiring a blind obedience from its subjects.

For Enlightenment-inspired thought, modern societies should not be regulated by a religious law, as this would contravene the principle of autonomy under which the law regulating collective life is the expression of individual and collective free human will² rather than the imposed divine will. From this perspective, the law is not only a matter of autonomous will claiming its independence from any heteronomous interference, but also a matter of rationality, as it is the result of collective deliberation based on rational arguments determining the collective good in the public sphere, usually through elected representatives of the people.³ Religion, because it is supposedly hermetic to rational argumentation, is associated with faith and beliefs that should remain in the private sphere rather than be the basis of public claims or inform the legislating process.

Yet contemporary political thought and institutions do not necessarily reflect this binary opposition between religion and modern political reason. Rather, they

also reflect a hierarchy of religions according to their “rationality” and ability to generate (or absorb) modern civilization in the colonial and postcolonial contexts. Kant’s *Religion within the Limits of Reason Alone* and Max Weber’s comparative work on religions, including his *Protestant Ethic and the Spirit of Capitalism*, place the institution of Christianity, and Protestantism in particular, at the top of the hierarchy of religions in the light of philosophical, economic, and political modernity. Representations about Islam, shari‘a, and its purported irrationality have been usually understood within this tension between the affirmation of a categorical opposition between reason and faith and a perceived hierarchy of religions according to their rationality.

The debate about reason in Islam was not raised for the first time in the colonial context. If colonial times (and their postcolonial aftermath) are certainly a defining moment in the discussion about reason in Islam, the debates that occurred between classical Islamic jurists, theologians, and philosophers from the eighth to the thirteenth centuries represent an earlier defining moment. Although the terms of the colonial and postcolonial debates explicitly revived some of the terms relied on by classical Islamic thinkers, they are still part of a distinct narrative positing the duality between Islam and the West, in which the lack of rationality is a distinctive trait of the former that explains other lacks such as the absence of democracy or development.

It is not my purpose here to formulate judgments about the rationality or the non-rationality of Islam against Western standards, which might involve starting from Kant’s work on reason or the Weberian definition of rationality to see if one can find their equivalent in the Islamic context (as Weber himself does in his comparative work on Islamic law). Rather, my purpose is to study the ways in which the notion of *‘aql* (reason) and its associated notions such as *i’tibār* and *naẓar* (reflection) have a cultural genealogy distinct from the Western trajectory of rationality. They are grounded in specific meanings and practices of rationality related to shari‘a and displayed in classical disciplines—the sources of jurisprudence, philosophy, *kalām*, and language—that still inform contemporary Islamic knowledges and culture.

Throughout the last third of the twentieth century up to the 2011 Arab uprisings, political debates about the constitutional status of shari‘a and its legislative place within the state were primarily related to the social implications of its enactment for individual rights and freedoms. Contemporary claims about women’s rights or individual freedoms within Muslim societies have been shaped as a conflict between shari‘a’s textual prescriptions on the one hand, and on the other hand, “international norms and standards.” For these rights groups and some modernist intellectuals, this conflict of norms is also a conflict between modernity, which requires the use of reason, and tradition, equated with religion.

While, in classical Islam, the debates involving discussions about the relationship between reason and revelation dealt with beliefs, creed, and theological topics

(God's attributes, the cosmos, the createdness of the Qur'an, causality, and free will), in contemporary Muslim societies the debates about reason and revelation deal primarily with legal and practical matters, individual rights and freedoms associated with Western liberal democracy and its dominant way of life. In classical Islam, the debates about reason and revelation occurred among thinkers and theologians who all spoke as Muslims in the name of the Islamic community and all claimed faithfulness to the revelation. In contemporary Muslim societies, the discussion about reason and revelation occurs within a divide between "secular-modernist" intellectuals and "religious-traditional" scholars that reflects a divide between "secular" and "religious-Islamic" groups within civil and political society in a context of duality between shari'a norms and modern state law rules that overlaps with the duality between Islamic and Western cultures.

Whatever the divisions were among classical scholars about the respective places of reason and revelation and about the authoritativeness of the Sunna, there was no doubt that shari'a rules should regulate collective life, even among the philosophers and *kalām* scholars. For Islamic philosophers, shari'a was a law that could be grasped and "translated" rationally, and was required for the polity's life. By contrast, in contemporary times, the revelation's authoritativeness is itself questioned as, for secular-modernist groups, it is modern state law, following international norms and standards, that should regulate society's life.

ISLAMIC REASON: SCRIPTURAL, LEGAL, AND SPECULATIVE REASONS

The question of rationality and use of reason in relationship to shari'a may be raised from two perspectives. On the one hand, as we saw in chapters 8 and 9, Islamic scholars relied on procedures of reasoning securing the production-extraction of legal rules. Although *qiyās* (analogical reasoning), along with the Qur'an, the Sunna, and the consensus of scholars, were among the sources of jurisprudence for almost all juridical schools, the use of reason in Islamic legal knowledge should not be understood in this narrow sense. Rather, forms of reasoning are also displayed in linguistic procedures, securing the meaning of the foundational texts for purposes of rule extraction. On the other hand, reason was also given a status by Islamic scholars *outside* jurisprudence and other forms of shari'a knowledge. The status of reason in classical Islam, notably its relationship to revelation and knowledge, was reflected on by Islamic thinkers, and was discussed by prominent jurists themselves in classical disciplines like *kalām* and philosophy that were not dealing with jurisprudence per se.

The Islamic episteme involves the use of reason in relationship to revelation that requires the reader to think beyond the binary opposition between the "rational" and the "non-rational." It would be mistaken to consider that reason is

independent from revelation or that there is no room for reason in Islamic legal knowledge. Reason is relied on to grasp the meaning and truth of the revelation, allowing the scholar, for example, to avoid the formulation of contradictory prescriptions from the Qur'an, when relating different verses on the same topic to each other, or when relating the sayings of the Prophet to the Qur'an. Reason is not only the instrument to formulate truth-claims about the hierarchy, authenticity, and meaning of revealed speech by relying on revealed speech itself. It is also a way to apprehend the world, for instance when assessing the meaning and truth of facts, events, and situations by relating them to revealed speech. Although classical Islamic scholars versed in *kalām*, philosophy and Islamic legal knowledge had different views on the role of reason as an instrument of truth-seeking, they nevertheless shared the same epistemic language, positing reason and revelation and raising the question of their interrelations and respective authoritativeness.

As we will see below, there are three distinct types of intellectual activities related to the revelation that vary in complexity but are often combined in classical disciplines: scriptural, legal, and speculative. Reason is an instrument to grasp the meaning of the revelation as captured by texts and mobilized to produce textual evidence for the formulation of truth-claims about the world and revelation itself (scriptural reason). Yet while Islamic legal reason may rely, more or less, on scriptural reason, it is not limited to the production of textual evidence but oriented toward the formulation of generative principles displayed in the discipline of *uṣūl al-fiqh*, and in the case of *ijtihād*, toward the production of legal rules mainly through fatwas. Islamic speculative reason may be involved in disciplines such as *uṣūl al-fiqh*, but its main object is to formulate truth-claims that are not necessarily based on the revelation's textual evidences. Islamic speculative reason's historical development consisted in shaping a space for dealing with theological and worldly questions (God's attributes, the cosmos, causality, free will), displayed in the disciplines of *kalām* and philosophy, that was autonomous from Islamic disciplines mobilized to produce scriptural evidence.

ISLAMIC PHILOSOPHY AND SPECULATIVE REASON

Unlike subsequent philosophers (Ibn Rushd, al-Ghazali, or al-Razi) who were skilled jurists, al-Farabi and Ibn Sina, although trained in *fiqh*, did not leave any known work in this discipline or in *uṣūl al-fiqh*. But both discussed the relationship between revelation (*waḥy*), revealed law (shari'a), and philosophical truth, the role of prophecy and the place of jurisprudence in the regulation of collective life and in government. They offered an understanding of the importance of shari'a assessed by speculative reason in a form of thought oriented toward the primacy of philosophical truth.

For al-Farabi, while religion is a form of theoretical and practical knowledge that gives access to truth, it is not the supreme form of knowledge.⁴ Religion offers a cosmology and knowledge about God and the world (including prophecy, life and death, justice, and happiness), and, in the form of jurisprudence, also offers practical knowledge about the way the community should be ruled. While religion is similar to philosophy in that they convey similar prescriptions and can both give access to truth, religion remains distinct from philosophy, as what is known through the former has not been formulated through demonstrative reasoning but directly through revelation. Yet, religion's virtuous laws (*al-sharā' i' al-fāḍila*) are all part of the "universals" of practical philosophy, and religion as a whole is part of "practical philosophy" (*falsafa 'amaliyya*).

Al-Farabi devotes several passages to jurisprudence and its place in the way the virtuous community should be ruled. For Al-Farabi, who writes about the relationship between revelation, jurisprudence, and the art of government in general terms rather than mentioning Islam specifically, the ideal ruler should know the prescriptions of the revealed law (*sharī'a*) revealed directly by the Prophet, either directly through his words (*alfāz wāḍi' al-sharī'a*) or through the exemplarity of his deeds (recounted in the Sunna). These legal prescriptions should help the virtuous ruler in his task, which consists in preparing the community for virtuous worldly life and happiness in the hereafter.

There should be a fundamental correspondence between the way the world is ruled by God and the way the city is ruled by the virtuous ruler. God is still the ultimate ruler (*mudabbir*) of the community when the ruler acts according to the revelation's prescriptions (*mā ya'tīhi al-wahy min Allah ta'āla*). The order of the community should mirror the harmony between its components, the same way there is harmony between the components of the world under God's rule. Philosophy allows the ruler to know how God rules the world, and the divine exemplarity in the order and harmony of the world-cosmos should help the ruler unify the virtuous community's will and actions toward supreme happiness (*al-sa'āda al-quswā*).

Unlike Islamic scholars and jurists who produced forms of knowledge related to the Islamic revelation on the basis of the Islamic revelation itself, philosophers like al-Farabi spoke in general terms about religion and the relationship between philosophical reasoning and revelation. Al-Farabi shared with Islamic scholars and jurists a common understanding that revelation offers a valid theory about God, existence, and the world, as well as a jurisprudence that should organize the life of the community. However, al-Farabi's views on the relationship between religion and philosophy imply that reason and demonstrative reasoning (*burhān*) are in a position to determine and assess the validity and truth of what has been conveyed through the revelation. Al-Farabi's views also imply that, for the philosopher at least, the discourse of the revelation or what believers hold to be the revealed

truth cannot be accepted as mere truth but requires the work of demonstrative reason.

Ibn Sina⁵ shared a similar conception about the primacy of philosophical truth when related to revealed truth. For Ibn Sina philosophy includes theoretical knowledge, the sciences of nature, mathematics, and the *ilāhiyyāt* (metaphysics), and practical knowledge mentioned as ethics (*akhlāq*). Since the discipline of *ilāhiyyāt* deals with the “first principle” and the “first cause” of existence (which is associated with God), it should be considered as “absolute wisdom” or “first philosophy,” for it is foundational to all other forms of knowledge and sciences.

In this epistemology, Ibn Sina addresses questions of cosmology and God’s existence and intervention in the world that overlaps with issues raised by the revelation. However, his *Kitāb al-Shifā’* (The Book of Healing)⁶ does not provide a hermeneutical work of the revelation’s texts or provide evidence based on revealed speech, but rather displays the work of speculative and demonstrative reason dealing with forms of knowledge that are not related to the disciplines dealing with the revelation (*fiqh*, *tafsīr*, or *hadith*).

Nevertheless, Ibn Sina, echoing the theological debates of his time, was also interested in “establishing the certainty of the prophecy” (*ithbāt al-nubuwwa*). As in al-Farabi’s writings, Ibn Sina mentions the prophecy and the revealed law in general terms rather than being specific to Islam and the Prophet Muhammad.⁷ He does not rely on the Qur’an or the Sunna to prove the truth of the prophecy. Rather, he starts from the need for humans to live in social states and cities, and to engage in social interactions and transactions. These social activities entail “prescriptions and justice” (*sunna wa ‘adl*)⁸ without which there would be no order and agreement between humans. Prophecy stems from this necessity for humans to have one indisputable legislation regulate their social activities, whose author is a human delegated by God to perform this task through revelation. The Prophet’s first teaching unveils that there is one omniscient Creator, Who should be obeyed with the promise of happiness, and Whose decrees as uttered by the Prophet’s tongue should be heard and obeyed. This constitutes the basis of all the other teachings and rules to be followed by the community. The Prophet’s task is also to mention God’s attributes and intervention in the world through symbols that can be easily grasped by the people. A more sophisticated and truthful speech about God would confuse most people and might lead to excessive questioning and doubts, becoming a source of disorder in the community.⁹

Ibn Sina recalls that, in order to avoid collective amnesia about the prescriptions and revealed laws (*sunan wa sharā’i*) to be followed by the community decades after the Prophet’s death,¹⁰ it was necessary for the Prophet to prescribe a series of repetitive deeds (the obligatory acts of worship, including prayer and fasting), whose primary goal is to remember and become closer to God. Prayer is particularly important as it is a moment of conversation between the worshipper

and God that is associated with piety, humility, fear, and deference. It is through those daily deeds that the revealed laws and their prescriptions can be preserved from loss and kept alive throughout centuries and generations.

For Islamic philosophers like al-Farabi and Ibn Sina, the labor of reason is not meant to target revelation or to limit its scope, but is a way to validate what revelation has already established as truth. If the overall goal and results of rational inquiry was not an issue to the extent that it was in agreement with revealed truth, the problem was rather the terms of the philosophical truth and the extent to which reason could thrive as a generative knowledge autonomous from the knowledge based on the revelation. Usually, in their truth-seeking project, philosophers would not rely on the revelation's texts to produce evidence. While some philosophers, like Ibn Rushd in *Faṣl al-Maqāl*, may engage in the interpretation of passages of the Qur'an to support their rational inquiry, the whole construction of the reasoned edifice, relying partially on Greek philosophical notions and reasoning, is not based on revealed evidence. The philosophers did not usually rely on the knowledge produced by the disciplines dealing directly with the revelation—*fiqh*, *tafsīr*, *ḥadīth*—but acknowledged and relied on philosophical reasoning to demonstrate the importance of the revealed law for the regulation of human affairs. They were more interested in developing a reasoned unity encompassing God's existence, prophecy, cosmology, nature, the world of humans, and revelation itself.

KALĀM AND THE ENTWINEMENT OF REASON AND REVELATION

Displaying a unique combination of speculative reason and revealed speech, the discipline of *kalām* (chapter 8), also known as the “sources of religion” (*uṣūl al-dīn*) or the “science of [God's] Unity” (*‘ilm al-tawḥīd*), was for centuries the main battlefield of disputes and disagreement between Muslim groups who were differentiated between each other according to their claims and positions about a series of questions related to God and His attributes, the world, prophecy, and miracles, the Qur'an's createdness, and the nature of human deeds.

Although classical scholars were deeply divided regarding the respective roles of reason and revelation and the nature of evidence that can be relied on to formulate truth-claims, they all agreed that there is a specific knowledge dealing with prescriptions about beliefs, distinct from other shari‘a knowledges. Ibn Taymiyya, known for his hostility toward *kalām* scholars and methods, which he attacked in several of his writings, was nevertheless the author of the *‘Aqīda Wāsiṭiyya*, stating what he considered the true Islamic creed and prescribed beliefs. Like Ibn Taymiyya, scholars who wanted to clearly differentiate themselves from the polemics and rationalist claims associated with *kalām* would use the name “*‘aqīda*” (creed) for

the knowledge dealing with God's attributes, the world, prophecy, the Qur'an's createdness, and the nature of human deeds.

At a time where Muslim groups were differentiated according to their claimed beliefs and creed, several classical Islamic scholars viewed *kalām* as the most important discipline, without which no other forms of shari'a knowledge could be established. For the twelfth-century scholar Fakhr al-Din al-Razi in his *Nihāyat al-'Uqūl fī Dirāyat al-Uṣūl* ('The Reasons' End in the Knowledge of the Sources), *kalām* is not only the noblest of all sciences because it deals with God, "the Noblest of all objects of knowledge" (*ashraf al-ma'lūmāt*), it is also foundational and prior to all religious sciences (*al-diyānāt kulluhā mutawāqifa 'alā hadhā al-'ilm*). "Without having established that the world has an Omniscient and Omnipotent Creator," he asks, "how is it possible for the Qur'an's exegete (*mufasssir*), the specialist of the hadith (*muḥaddith*) and the jurist (*faqīh*) to engage in their knowledge?"¹¹

If some scholars rejected the claim about the preeminence of *kalām* over all other disciplines, others also contested the constitution of *kalām* as a demonstrative discipline in its own right. This position was notably taken by scholars from the Hanbali school. In response to these polemics, and to the argument that *kalām* knowledge was not explicitly prescribed by the Prophet Muhammad, Abu Hasan al-Ash'ari (whose name is associated with the eponymous doctrine that is today the most widely shared among Muslim societies and claimed as the "official" creed of several countries) authored *Risālat Istiḥsān al-Khawḍ fī 'Ilm al-Kalām* (Treatise on the Appropriateness of Inquiry into the Science of *Kalām*) to delimit a legitimate and lawful space for his discipline. For al-Ash'ari, a close look at the revelation shows that there is an authoritative textual foundation to *kalām* in the Qur'an and the Sunna in which substantive *kalām* topics like God's unity are mentioned in general terms. If the Qur'an and the Sunna are "the sources of *kalām*" (*uṣūl al-kalām*), however, this does not mean that they provide detailed knowledge. Rather the scholar must rely on *ijtihād* (personal effort), the same way the Qur'an and the Sunna do not include all legal questions in jurisprudence and call for analogical reasoning (*qiyās*). Most important, while the branches and particulars are known only on the basis of knowledge acquired through audition and transmission (*al-furū' lā tudrak aḥkāmuhā illa min jihat al-sam' wa al-rasl*), *kalām* belongs to the domain of rational matters (*al-masā'il al-aqliyyāt*) as it deals with the foundations and the sources (*uṣūl*).¹²

Classical scholars like Ibn Taymiyya and Ibn Qudama who thought that the *kalām* practiced by their contemporaries could not be considered a proper shari'a discipline relied not only on revealed speech's texts to prove their point, but also grounded their claims in forms of reasoning used in *kalām*. In his *Taḥrīm al-Nazar fī Kutub Ahl al-Kalām* (Treatise Prohibiting the Study of the Books of the *Kalām* People), Ibn Qudama aims to refute the claim, shared among many *kalām* scholars,¹³ that there is an obligation for each Muslim endowed with reason to rely on his intellect to reflect on God's attributes and other creed topics.

For Ibn Qudama, the Prophet Muhammad never enjoined Muslims to reflect on rational evidence (*al-naẓar fī adillat al-‘uqūl*) for matters related to beliefs and creed.¹⁴ Moreover, the common people (*‘āmma*) cannot be endowed with the individual responsibility to practice *ijtihād* for the acquisition of knowledge on these matters, as it would require each individual to devote time to this search instead of working on their respective productive tasks and would make collective life based on the division of labor impossible. That is the reason why the common people are required to follow (*taqlīd*) what the scholars say about the beliefs to be held (as in other jurisprudential matters) instead of relying on their own inquiry. Hence, God’s unity (*tawḥīd*), Muhammad’s prophecy, and the acts of worship are self-evident (*al-amr al-ẓāhir*) topics that do not require intellectual effort and cannot be the object of *ijtihād*.

CONFLICTS OF EVIDENCE

One of the most important contentious issues between classical scholars versed in and/or hostile to *kalām* was the nature of the evidence that can be provided to formulate truth-claims regarding topics related to beliefs and creed. They notably disagreed as to whether the interpretation of revealed speech utterances taking some distance from the conventional meaning (as defined by the semantic conventions of language determined by scholars of language and whose theological-jurisprudential use are accepted and validated by the scholars of the time) was a sound method. In his *Nihāyat al-‘Uqūl*, al-Rāzi, who shared with Abu Hasan al-Ash‘ari the idea that *kalām* belongs to the realm of rational matters (*‘aqliyyāt*), and belonged himself to the Ash‘ari school, raised the following question: Is it lawful to rely on transmitted evidence when dealing with matters belonging to reason (*hal yajūzu al-tamāsuk bi-l-adilla al-sam‘iyya fī al-‘aqliyyāt am lā*)? Al-Rāzi formulated three categories of argumentation: truth-claims requiring exclusively revealed evidence, truth-claims requiring exclusive rational evidence, and truth-claims requiring revealed *and* rational evidence. It was the third that raised the most significant difficulties, since it signaled the possibility of contradictions between reason and revelation.

More specifically, what happens if the conventional and “outer” meaning of revealed speech (*ẓāhir al-naql*) contradicts reason? The solution to this problem is either to reject reason as untrue (*takdīb al-‘aql*) or to interpret the revealed speech-evidence (*ta’wīl al-naql*). For al-Rāzi, the scholar facing this problem should always rely on interpretation of revealed speech with the help of reason, as the very validity of revealed speech as acceptable evidence can be established only by reason (*al-naql lā yumkinu ithbātuhu illa bi-al-‘aql*). The truth of the revelation needs to be demonstrated by reason before revealed speech can be accepted as true and constituted as a source of evidence, and this kind of demonstration requires the

scholar to establish the existence of the Creator and the truth of the prophecy.¹⁵ Hence, any attempt to reject the work of reason to make transmitted speech prevail will result in weakening and belittling revealed speech (*tashīḥ al-naql bi-radd al-‘aql qadhun fī al-naql*). To put it briefly, the dismissal of reason is, at the end, a dismissal of revealed speech.¹⁶

Al-Razī’s principle giving preeminence to reason over revealed speech in a situation of conflictual evidence was previously formulated in a similar form by al-Ghazali in his book *Qānūn al-Ta’wīl* (The Procedure of Interpretation). This principle became the object of Ibn Taymiyya’s criticism in his *Dar’ Ta’arud al-‘Aql wa al-Naql* (Refutation of the Contradiction between Reason and Revelation).¹⁷ Although Ibn Taymiyya started from al-Razī’s central argument that “reason is the foundation of revelation” (*al-‘aql aṣl al-naql*), his overall target was all scholars claiming “to know divine matters on the basis of their reason” (*ma ‘rifat al-ilāhiyyāt bi-‘uqūlihīm*),¹⁸ by which he meant scholars of philosophy, *kalām*, and those versed in rationalist matters (*ahl al-ḥikma wa al-kalām wa al-‘aqliyyāt*).

In response to al-Razī’s argument and to all the “rationalists,” Ibn Taymiyya recalls that reason cannot be endowed with the authority to validate the truth of revelation (*shar‘*), as the latter exists in its own right and by itself (*al-shar‘ thābit fī nafsihi*) and does not need the scholar’s reason or knowledge to exist. Yet the reverse is not true, as reason, after its encounter with revelation, becomes knowledgeable about its needs for its worldly life and afterlife, and acquires attributes (*ṣifāt*) it did not have before that encounter.¹⁹ Moreover, Ibn Taymiyya questions the notion of reason as relied on by al-Razī and the rationalists on the grounds that it is too general and too vague to be considered relevant; it may refer to several genres (*naw‘*) relied on by different groups claiming the use of reason. For example, if what is meant by reason is the “natural faculty” (*ghazīra*), then reason cannot be opposed to revelation as this form of reason is the necessary condition of all forms of knowledge, be it rational or revealed, the same way life is their necessary condition (*sharṭ li-kulli ‘ilmin ‘aqlī aw sam‘ī kā-l-ḥayāt*).²⁰

Another point raised by Ibn Taymiyya is that the kind of interpretation (*ta’wīl*) relied on by the *kalām* scholars and other rationalists is based on their opinion and use of metaphors rather than an attempt to be faithful to the intent of the speaker (*lā yaqṣidūna ṭalab murād al-mutakallim bihi*).²¹ They even suggest that these meanings unveiled by interpretation and rational investigation may have not been known by the Prophet, or that the Prophet knew it and did not want to disclose it. In either cases, for Ibn Taymiyya, this kind of statement is absurd, as the mission of the Prophet, as a messenger (*rasūl*), is precisely to communicate the truth to the people. This approach contravenes the Prophet’s speech, and may be considered a dismissal of the Prophet and a form of unbelief (*takdīb al-rasūl kufr ṣarīḥ*).²²

For Ibn Qudama, too, the interpretation of revealed speech relied on by *kalām* scholars, for example on matters related to God’s attributes, should be condemned

because what needs to be known is already mentioned in revealed speech transmitted by the prophecy. Interpretation is an innovation (*bid'a*) that oversteps the limits of what can be known about God; scholars can try to know the conventional-linguistic meaning of God's speech at best, but they can never know His intent and what He "really meant." Any expression of a personal opinion (*ra'y*) about the Qur'an and the Sunna should not be allowed, since it associates God with words He never said. Scholars, and more generally Muslims, need to have faith in God's words and they should keep silent about meanings that cannot be known.

For Ibn Qudama, there is no need of interpretative knowledge because it is not related to a deed, its object does not entail a legal obligation (*taklīf*), and it is not an inquiry requested by God. The only request is faith, and yet, faith does not necessarily involve the knowledge of the meanings associated to what is believed in, as one can have faith in what has been said in the Qur'an without knowing its meaning (*yumkin al-īmān bihā min ghayr 'ilm ma'nāhā*). An example would be when God enjoins humans to have faith in angels, the prophecy, and the revelation.²³ At the end of the treatise, Ibn Qudama's last advice to those who are still interested in intellectual inquiry is to leave matters of creed aside and switch their efforts to the intricacies of jurisprudence (*fiqh*) or the abstraction of mathematics.

LAWFULNESS OF SPECULATIVE REASON

Echoing both philosophical and *kalām* debates about the relationship between reason and revelation, Ibn Rushd's *Faṣl al-Maqāl fīmā bayna al-Ḥikma wa al-Sharī'a min al-Ittiṣāl* (Decisive Treatise on the Link between Philosophy and the Revealed Law) raises the question of the lawfulness of the use of speculative reason: "Are philosophy and the science of logic permissible from the perspective of the revealed law (*mubāh bi-l-shar'*)? Or does it belong to any other category of Islamic jurisprudence?" This last question asks about the four other categories of Islamic legal reasoning (forbidden [*maḥẓūr*], prescribed [*ma'mūr*] either as recommended [*al-nadb*] or as obligatory [*wājib*]). Ibn Rushd's book is a systematic exercise of analogical reasoning (*qiyās*) drawing parallels and analogies between Islamic legal knowledge and rational knowledge of the world.²⁴

For Ibn Rushd, it is an Islamic legal obligation (*wājib*) to rely on reason to grasp the meaning of the world, particularly in the form of philosophy which consists in "looking at beings and reflecting upon them" (*al-naẓar fī al-mawjūdāt wa i'tibāruhā*).²⁵ Knowledge of the world and knowledge of texts both require *qiyās*, called by Ibn Rushd either *qiyās 'aqlī* (pure reasoning) when it deals with the former or *qiyās fiqhī* (jurisprudential reasoning) when it is related to the latter. Ibn Rushd quotes several passages of the Qur'an to support his position, notably *Sūrat al-Ḥashr*, 2: "*fā-a'tabirū yā ūlī al-abṣār* (So reflect O people of vision), from which

one can understand that the combined use of pure reasoning and legal reasoning (*al-qiyās al-‘aqlī wa al-shar‘ī ma‘an*) is obligatory (*wujūb*)²⁶.

When defining the concept of reflection (*i‘tibār*), Ibn Rushd uses the notion of *istinbāt* (extraction) relied upon in Islamic legal knowledge, particularly in *uṣūl al-fiqh*, to describe the procedural operation of rule production. In the same way the discipline dealing with the sources of jurisprudence is defined as the knowledge of the procedures upon which legal rules may be *extracted* from shari‘a’s sources, reflection consists in the *extraction* of the unknown from the known (*istinbāt al-majhūl min al-ma‘lūm*).

Here, rationality is foremost a matter of sight and is related to the way humans look at the world. All the *āyāt* quoted by Ibn Rushd stress the importance of the gaze, a sight with reason (*al-naẓar bi-l-‘aql*), for rationality is understood as the way the subject apprehends, and perceives, the world he lives in. Ibn Rushd’s use of reason in the world, outside the scope of Islamic legal knowledge, is consistent with the way the jurist uses his reason with shari‘a texts to produce a legal rule, or assesses facts and deeds as a mufti (or as a judge), for he sticks only to the visible (*ẓāhir*). From this perspective, pure rationality, understood as a rationality that is not a priori tied to the revealed law (but still tied to God), shares with Islamic legal rationality the commitment to sensuous and material reality. However, this pure rationality does not have its end in itself and for itself, but is another way to know God (*al-‘arīfu bi-Allah*) through the knowledge of the world and beings, the same way one knows the Artisan-Creator (*al-ṣāni‘*) through His creation-artifacts (*maṣnū‘āt*).

For Ibn Rushd, if pure reasoning is an Islamic legal duty, it is also an Islamic legal duty to look at what has been written about reason by non-Muslims (*ghayr mushārik fī al-milla*), notably those who preceded Muslims. The Muslim scholar cannot refuse a priori to look at their work, but will endorse (or reject) it entirely or partially on the basis of his own reasoning.²⁷ Since the revealed law (*shari‘a*) is the truth (*ḥaqq*), and enjoins people to know the truth, then demonstrative reason (*al-naẓar al-burhānī*) cannot contradict what the revealed law has established, for truth cannot be opposed to truth (*al-haqqā lā yuḍādu al-haqqā*), but is in harmony with it and testifies for it. If demonstrative reason comes to a result for which jurisprudence is silent, then there is no contradiction between the two. If jurisprudence speaks about the same matter, and formulates a judgment similar to what demonstrative reason has produced, then too there is no contradiction. However, if jurisprudence contradicts what demonstrative reason says about a certain case, then the former needs to be reinterpreted (*ṭuliba ta’wīluhu*).²⁸

THE ISLAMIC LEGAL EPISTEME AND REASON

For classical Islamic scholars, the discipline of *uṣūl al-fiqh* is not only a way to know the *reasons* behind the formulation of an already known legal rule transmitted

within the Islamic community and formulated in the literature dealing with “the branches” (*furūʿ*), but also a way to be equipped with the necessary epistemic instruments when they have to deal with new cases and situations raised in the community’s life. In *Sharḥ al-Lumaʿ*, Abu Ishaq al-Shirazi recalls that without the knowledge of *uṣūl al-fiqh*, the jurist “is unable to say what is the basis upon which the categorical prescription or proscription is formulated nor what is the proof (*dalīl*) making such a command obligatory.”²⁹ Moreover, if the scholar “may know, through the branches of jurisprudence (*furūʿ*), which legal category an already established issue belongs to, he would not be able to know what is the right legal category to which a new issue should be assigned if asked about it.”³⁰

In the classical Islamic legal episteme exemplified by al-Ghazali’s *Mustasfā fi Uṣūl al-Fiqh*, several scholars dealing with the sources of jurisprudence would classify knowledge according to the way reason and transmission may be relied upon in each discipline. In this taxonomy, *uṣūl al-fiqh* would be distinct from the sciences relying on rationality alone as well as from the knowledge relying only on transmission. “Pure rationality (‘*aqlī maḥḍ*),” as displayed in disciplines such as arithmetic, geometry, or astrology, is neutral from the perspective of the revealed law. Although this kind of rationality may disclose the truth regarding the subject-matter, it does not have any ethical value, for it does not help (nor hinder) the Muslim to get the reward of the afterlife [*ākhirah*].

On the other hand, the sciences relying on “pure transmission” (*naqlī maḥḍ*),³¹ such as the discipline of hadith and *tafsīr*, do not require more than “the force of memory” (*quwat al-hifẓ*) and leave no space for reason (*wa layssa majāl lil-‘aql*). *Uṣūl al-fiqh* does not rely on pure imitation (*maḥḍ al-taqlīd*), for it cannot accept what has not been assessed and supported by reason. Nor is it pure reason, for it cannot accept what has been denied by the revealed law. Rather than being set apart from each other as in other disciplines, the combination of reason and transmitted knowledge (*samʿ*) is constitutive of *uṣūl al-fiqh*, as the latter relies on both judgment (*raʾy*) and the revealed law (*al-sharʿ*).³²

While *uṣūl al-fiqh* is a discipline in its own right dealing with the generative procedures out of which legal rules may be produced, it was not uncommon for classical jurists to raise *kalām* questions and engage with their adversaries on contentious issues (the status of knowledge, divine speech, the cosmos, prophecy, or the nature of human deeds). For al-Ghazali, it is assumed that *kalām*, as opposed to all other Islamic disciplines, including *uṣūl al-fiqh*, is the holistic and “highest religious science”³³ that determines the rational conditions of possibility of all other religious forms of knowledge and allows the scholar to examine “the whole” as such before dealing with the issues raised in the specialized fields of knowledge (*juzʿiyyāt*).

However, for al-Ghazali, although the knowledge of *kalām* is a necessary condition for anyone claiming to reach the rank of ‘*ālim muṭlaq*, it is not required for

scholars to be authorized to deal with their respective fields in *uṣūl al-fiqh*, *fiqh*, *tafsīr*, and *hadith*, because they can rely, through imitation and transmission (*musallam bi-l-taqlīd*), on what has been already established by *kalām*. Hence, the scholar versed in *fiqh* “does not have to demonstrate again that humans endowed with legal responsibility have the ability to choose” (*laysa ‘alayhi iqāmat al-burhān ‘alā ithbāt al-af‘āl al-ikhtiyāriyya lil-mukallafīn*) in order to explore prescriptions and proscriptions as delineated in the revealed law. The scholar dealing with *uṣūl al-fiqh* too does not need to rely on rational demonstration to establish the receivability of the revelation for legal purposes before inquiring about their authenticity and meaning, for he already starts from this premise after *kalām* has demonstrated it.³⁴

For al-Ghazali, *kalām* allows scholars to grasp the meaning of the world in rational and holistic terms. Yet reason acknowledges that it is receiving “knowledge from the Prophet about God and the Day of Judgment,” which cannot be firmly established or refuted by reason alone (*lā yastaqillu al-‘aql bi-darkihi wa lā yaqḍī ayḍan bi-istiḥālātihi*). Moreover, reason alone is unable to firmly establish or refute that obedience to the revealed law is a source of happiness in the afterlife.³⁵

Besides *kalām* questions, several works of *uṣūl al-fiqh* would also discuss jurisprudential reasoning in relationship to the science of logic and syllogisms. For al-Ghazali, the science of logic was not unconsciously relied upon to delineate the generative principles commanding the operation of rule production in Islamic legal knowledge, but was an explicit constitutive foundation of the discipline of *uṣūl al-fiqh*. However, although some scholars dealing with *uṣūl al-fiqh* did not relate their discipline to the science of logic, they all systematically ground their work in the rules of grammar and language. Exemplified by al-Ghazali’s *Mustaṣfā*, the principles of logic not only display a structural homology with the rules of language, but are mirrored in the single and combined linguistic units and their usages for epistemic purposes.

For al-Ghazali, we need first to agree upon the rules of deduction and inference, which reflect themselves the rules of language, because truth production in Islamic legal knowledge, and more generally in Islamic sciences, requires a prior agreement on the general rules of use of words in utterances for reasoning and demonstrative purposes. In his *Mustaṣfā*, al-Ghazali starts with a chapter devoted to the knowledge of “logic” (*manṭiq*) delineating principles of distinction and separation between single words (or to use the terminology of Saussure’s linguistics, between “linguistic units” or “concrete units”) and the possibilities of their combination in utterances for demonstrative purposes (*burhān*).

For classical Islamic scholars versed in the science of logic and language, cognition first comprehends the single entities (*al-dawāt al-mufrada*) designated by the single nouns. Second, it relates these entities to each other through affirmation (*ithbāt*) and negation (*nafy*), as it produces relationships between the qualifying (*wāṣif*) and the qualified (*mawṣūf*) as well as effects of confirmation (*taṣḍīq*) and

invalidation (*takdīb*). In recounting the principles of cognition, al-Ghazali relies on the terminology of grammar, as the single linguistic entity (*mufrad*) may be part of a truth claim when it is associated with a predicate (*nisba khabariyya*).

These grammatical rules are coextensive to the rules of Arab logic and philosophy in which the single entity (*mufrad*) may be grasped as concept (*taṣawwur*) constituting immediate knowledge (*ma'rifa*) distinct from the mediated knowledge ('*ilm*) produced by conjectural reason (*al-ẓann*) and corresponding to combined utterances (*murakkab*). Immediate knowledge (*ma'rifa*) includes what is directly grasped by the senses (*maḥsūsāt*) and the self, for example the state of existence (*wujūd*), but also what requires the utterance of a definition (*yuṭlab taḥṣīruhu bi-l-ḥadd*). Mediated knowledge ('*ilm*) encompasses premises, syllogisms, and demonstrative reasoning (*burhān*) establishing or disproving claims. For al-Ghazali, definitions (of single units) and demonstrations (combining different units) are the main tools to literally "hunt" (*yuqtanaṣu*) for knowledge.³⁶ Other works of *uṣūl al-fiqh* do not start with a section on logic, but nevertheless display underlying forms of reasoning from al-Ghazali. Most important, they usually start each section of the book with the definition (*ḥadd*) of each single element before relating it to other elements, delineating its possible occurrences and raising disputed issues relying on syllogisms and demonstrative forms of enunciation.

The study of the science of logic was not restricted to the fourth and fifth century of Islam, usually described by the dominant narrative as the "golden age" of Islamic forms of knowledge, but was also part of the training of Islamic scholars in centers throughout the Muslim world until colonial times.³⁷ In eighteenth- and nineteenth-century Egypt, several prominent jurists taught the science of logic in Al-Azhar. For example, the eighteenth century scholar Al-Damanhuri (d. 1778), who wrote a commentary on a verse compendium of logic originally authored by the Moroccan scholar Akhdari, considers that the science of logic strengthens the grasping faculty (*idrāk*) and avoids mistakes, "the same way whoever knows the rules of grammar does not make mistakes when formulating utterances."³⁸

While Islamic scholars would not necessarily expect a *mujtahid* to know the discipline of logic, they would nevertheless require a thorough knowledge of Arabic and its grammar for him to deal with revealed speech as written in the Qur'an and the Sunna, as he should be able to differentiate between distinct meanings and uses of utterances. The possibility of plural meanings associated with the very use of language as understood by Islamic scholars determines the scope of possible and acceptable disagreement regarding the formulation of (legal) rules out of revealed speech. The knowledge of linguistic units and the rules of grammar is as much a way to acknowledge the possibility of divergences in rule production among scholars as it is to secure the search for a rule and ground it in one definitive meaning.

Scholars of *uṣūl al-fiqh* rely on the science of language in order to classify linguistic propositions according to the degree to which their meaning is conveyed

with more or less certainty. The meaning of the grammatically correct utterance (*al-lafẓ al-mufīd*) may be explicit (*naṣṣan*) without any other possible meaning, obscure (*mubhaman*), or subject to several possibilities without being able to determine which one is the most probable (*mujmalan*). When the most probable meaning is determined, it is called *ẓāhir* (manifest), while the less probable is known as the *mu'awwal* (hidden/allegorically interpreted).³⁹ When an utterance displays a strict correspondence between the word and the thing it refers to (*mā istu'mila fī mawḍu'ihī*), it is a literal truth (*haqīqa*). When there is no literal correspondence between the word and the thing it refers to, it is a metaphor (*majāz*).⁴⁰

On specific normative injunctions, some scholars asked whether the Qur'anic utterances reproducing the same grammatical form and formulating a seemingly general prohibition, such as "Your mothers have been prohibited to you" (*ḥurrimat 'alaykum umahātikum*) or "The dead corpses have been prohibited to you" (*ḥurrimat 'alaykum al-mayyita*) would mean that all forms of interaction with mothers and with dead corpses have been prohibited. For al-Ghazali as for most jurists, the linguistic usage of the Arabic speaking people (*'urf ahl al-lughā*) shows clearly that these utterances refer only to certain categories of deeds. In the first Qur'anic utterance, it is only sexual intercourse with the mother that is forbidden, the same way one should understand the Qur'anic authorization "*uḥīlat lakum bahīmatu al-an'ām*" as referring only to the act of eating the meat of the cattle.

Classical works of *uṣūl al-fiqh*, philosophy, and *kalām*, and the forms of knowledge based on and dealing with reason and revelation discussed in this chapter, inform the work of contemporary thinkers in Muslim societies. While there is no consensus among these thinkers about dealing with classical texts as a way to develop contemporary thought (see chapters 8 and 9), several prominent thinkers suggest that these texts have a scholarly-ethical value and can help formulate a renewed Islamic thought.

REASON AND REVELATION IN CONTEMPORARY TIMES

At the end of the nineteenth century, Muhammad Abduh, interested in the "renewal" (*tajdīd*) and "revitalization" (*iḥyā'*) of Islamic knowledge in contemporary times,⁴¹ invested his scholarly efforts mainly in *kalām*, as it offered, more than any other discipline, the possibility of reexamining the relationship between reason and revelation on the basis of faithfulness to the divine message. Abduh was also interested in the discipline of *tafsīr* as the latter allowed for a direct engagement with God's words and opened up possibilities of interpretation echoing the imperative of understanding and "cogitation upon God's words" (*al-ta'āqul li-kalāmihi*).⁴²

Abduh's engagement with *kalām* occurred in a context where Orientalists like Ernest Renan, colonial experts like Cromer, and Egyptian modernist intellectuals

like Farah Antun questioned the rationality of Islam (see chapter 13). Colonial experts and Orientalists offered an explanation of the “backwardness” of Muslim countries and justified “the need” for colonial domination on the basis of this purported “lack” of rationality. While Abduh’s writings are an attempt to renew the way Muslims deal with the world on the basis of both faithfulness to the revelation and the “necessities of the time” (*hājāt al-‘aṣr*) (see chapter 7), he is also addressing the anti-rationalist prejudices and claims against Islam coming from some Islamic scholars of the past and the present, as well as from Western scholarship and rule of his time.

In his work devoted to *kalām* entitled *Risālat al-Tawḥīd* (Treatise on [God’s] Unity), Abduh recalls that this discipline, also called the “science establishing beliefs” (*‘ilm taqrīr al-‘aqā’id*), relies on rational evidence (*dalīl ‘aqlī*) to establish the existence of God (*wujūd Allah*), His attributes, and the prophets. It is also the discipline refuting misconceptions held about beliefs and creed. For Abduh, Islam not only addresses reason but calls for reflection and the “intertwinement of reason and religion” (*ta’ākhī al-‘aql wa al-dīn*). It is only through reason that belief in God’s existence, the prophets, the revelation, and the understanding of the revelation’s meaning is possible. There may be difficulties in understanding some aspects of the revelation but there is nothing in it that is non-rational or impossible for reason to grasp (*fa-lā yumkin an ya’tiya bimā yastahīlu ‘inda al-‘aql*).⁴³ Moreover, the revelation carves a central space for “those who reflect” (*al-nāẓirīn*), as the right intellection leads to belief in God (*naẓar saḥīḥ mu’addin ilā al-i’tiqād bi-Allah*).

In the first part of *Risālat al-Tawḥīd*, entitled *aḥkām al-wājib* (“the rules governing the necessity”) Abduh explores the topics of existence, eternity, knowledge, will, and capacity, all dealt with by classical *kalām* scholars and philosophers. Abduh relies on demonstrative reason (*burhān*) and the three logical-ontological categories discussed by al-Farabi, Ibn Sina, and Aristotle: the impossible, the possible, and the necessary. In the second part, entitled *al-ṣifāt al-sam’a allatī yajibū al-i’tiqād bihā* (“the revealed attributes requiring belief in them”), Abduh addresses themes like God’s deeds, human deeds, choice, good and evil, belief, and miracles that can be known through the revelation but which are not rejected by reason and rather came to support what has been demonstrated by reason in the first part. Like relevant *kalām* scholars and philosophers, Abduh states that in a situation where there may be a contradiction between reason and revelation, reason should prevail over the conventional meaning of revealed speech (*taqdīm al-‘aql ‘alā ṣāḥir al-shar’ ‘inda al-ta’arūḍ*) as the scholar should explore the possibilities of interpretation of the latter until it agrees with reason.

While Abduh acknowledges that the Qur’an is a source of jurisprudential rules dealing with acts of worship and social interactions, he underlines that the “practical legal rules that came to be known as jurisprudence are the less significant part of the Qur’an” (*al-aḥkām al-‘amaliyya allatī jarā’ alā tasmiyatihā fiqhan hiyya*

aqall mā jā'a fī al-Qur'ān).⁴⁴ Coming from the Grand Mufti of Egypt who issued dozens of fatwas prescribing legal rules to be followed by his contemporaries, this statement should be understood as a way to stress the changing nature of jurisprudence's rules over time compared to the a-temporality of the revelation and the fixity of its texts, and as a way to underline the importance of the Qur'an's spiritual-ethical dimension calling for "internalization" and reflection upon the world. Yet, the significance of the spiritual-inner life and the intellectualization-abstraction associated with Abduh's views are also a way to educate the individual and collective selves and guide their action toward the social life of the present. Hence, for Abduh the "true jurisprudence" (*al-fiqh al-ḥaqīqī*) consists of "moral education and ethical refinement of the souls toward their happiness" (*tahdhīb wa da'wat al-arwāḥ ilā mā fihā sa'ādatiḥā*), as much as it consists of their "liberation from ignorance to elevate them to the top of knowledge, and a guidance on the path to social life."⁴⁵

Abduh's thought is the first systematic attempt to formulate responses to questions raised by the narrative of the encounter with the West. This narrative offers an "explanation" of the hegemony of the West over Muslim societies based on the "lacks" of the latter that can be identified through a comparative history. In response to this narrative, Abduh suggests that contemporary life does not require a rejection of the past or a selective reading of the past in terms dictated by Orientalists and colonial officers. Rather, there is a work of interpretation of the past that needs to be done by Muslim scholars and thinkers on behalf of the collective self to guide contemporary life in the light of both reason and revelation. That is the reason why Muhammad Abduh's work was reclaimed by Islamic scholars interested in jurisprudence, but also discussed by modernist thinkers interested in the place of reason and the relationship between contemporary Muslim societies and the West.

THE RENEWAL OF ETHICAL REASON

We saw earlier (chapter 13) how contemporary thinkers like Laroui called for an overcoming of the thought produced by Muhammad Abduh and other Islamic scholars of the beginning of the twentieth century on the grounds that reclaiming the Islamic past for the present is a vain enterprise that remains attached to an "empty self." Other thinkers, like al-Jabiri, have criticized the classical dominance of Islamic hermeneutics (*al-bayān*) over other forms of inquiry and attempted to giving a new life to "Arab reason" through a revival of demonstrative reason epitomized in Ibn Rushd's thought. More recently, another Moroccan thinker, Taha Abderrahmane, has advocated for a more generous relationship to the past and Islamic classical texts and thought (*turāth*) on the basis of a different understanding of rationality and temporality.

For Abderrahmane, the revival of Islamic thought grounded on the continuous transmission of classical works inherited from the past should rely on a close reading of these texts, notably within the discipline of *kalām*.⁴⁶ Abderrahmane is particularly interested in grasping the logical conditions structuring the Islamic text (*al-shurūṭ al-mantiqiyya lil-naṣṣ al-islāmī*) and its argumentative and dialogical construction⁴⁷ as a way to build a model of Arab discourse and argumentation. Yet, for Abderrahmane, the tradition (*al-turāth*) and its texts can no longer be assessed by a Cartesian type of rationality and its simplistic assumptions, as reason should not be reduced to its logical operations nor equated with one form of rationality understood as the “universal” rationality. Rather, for him, rationality is always contextual, and takes shape in the linguistic practices of a given time, place, and culture. Hence, in the typology of reasons in Islam delineated in *al-ʿAmal al-Dīnī wa Tajdīd al-ʿAql* (The Religious Deed and the Renewal of Reason), Abderrahmane differentiates between abstract reason (*al-ʿaql al-mujarrad*), reason guided by jurisprudence (*al-ʿaql al-musaddad*), and reason supported by spirituality and ethics (*al-ʿaql al-muʿayyad*).

Abderrahmane argues that the revival of Islamic thought, which is at the same time a renewal, should be grounded in “supported reason” (*al-ʿaql al-muʿayyad*) rather than “abstract reason” (*al-ʿaql al-mujarrad*) or “guided reason” (*al-ʿaql al-musaddad*), as it builds on them. From the perspective of ethics, guided reason is preferable to abstract reason because guided reason is practical and deals with deeds oriented toward the good and the avoidance of the harm as “guided” by the revealed law (*sharʿ*), while abstract reason is limited to the knowledge of notions and attributes (*maʿrifat al-ṣifāt*) without ethical-practical considerations. Yet, guided reason is not devoid of “ethical harms” (*āfāt khulūqiyya*), for example, when the self loses sight of the purposes (*maqāṣid*) of the prescribed deeds and is oriented toward the social benefit associated with these deeds, or when the self is so oriented toward himself that he no longer acknowledges others.⁴⁸ Hence, while guided reason is devoted to the knowledge of deeds (*maʿrifat al-afʿāl*) and deals with things in their external dimension, supported reason deals with the knowledge of beings and selves (*maʿrifat al-dhawāt*), their inner life (*bāṭin al-dhawāt*), and more generally with the inner traits and the inner deeds of things (*al-awṣāf al-bāṭina wa al-afʿāl al-dākhiliyya lil-ashyāʾ*) that are grasped through an experience full of life (*al-tajriba al-ḥayya*).⁴⁹

Supported reason deploys the faculties of abstract reason in the knowledge of things, and the faculties of guided reason in the practical knowledge of the obligations prescribed by the law, but supported reason is interested in knowing more than the external aspect of things and in doing more than the obligations, as it orients the self toward supererogatory practices and their spiritual meaning. Following Sufi teachings, these practices should elevate the self beyond the hardship of obligation and bring him serenity, peace of mind, and tranquility (*sākina wa*

tuma'nīna). Hence, supported reason involves experiential ethics and requires sincerity (*ikhhlās*) and the practical sight full of life (*al-naẓar al-'amalī al-ḥayy*).⁵⁰ Supported reason is also a reenactment of the entwinement of knowledge and practice (*'ilm wa 'amal*), which should be reflected in all forms of knowledge, not only linguistics and logic⁵¹ but also in Islamic jurisprudence (*fiqh*), in which the "truth of the unseen" (*al-ḥaqīqa al-ghaybiyya*) has been historically peripheral and divorced from the "scientific truth" (*al-ḥaqīqa al-'ilmiyya*).⁵² In each form of knowledge, the scholar should be able to relate to God, besides the subject-matter of his discipline.⁵³

Supported reason requires not only a close reading of texts, but an ethical education through classical Islamic texts inherited from the previous generations (*al-turāth*). It is true that the temporal distance from the past can be challenging to contemporary thinkers but when the latter deal with texts not as abstract, material or external things but as living texts capturing men's ethical exemplarity (*al-tan-amduj*) then the "Islamic texts can return to us" (*rujū 'al-nuṣūṣ al-islāmiyya ilaynā*) rather than the other way around. Here, the exemplary ancestors (*salaf*), when viewed through a practical sight full of life (*naẓar 'amalī ḥayy*), are a source of practical inspiration (*al-tasalluf al-'amalī*) and not only of abstract knowledge for the sake of knowledge.⁵⁴ Abderrahmane recalls that the transmission of the Prophet Muhammad's exemplarity was enabled by the close companionship of the "Companions" (*al-ṣaḥāba*) who taught the prophetic teachings to the subsequent generations⁵⁵ through living and continued transmission (*inna lil-namūdāj sanadan 'amaliyyan muttaṣilan*).⁵⁶

While supported reason displays a form of logic enlightened by divine legislation (*al-musharri 'al-ilāhī*), and guided by lawful deeds (*al-a'māl al-shar'iyya*), it bears the ethical responsibility (*taklīf takhliqī*) of proximity to God (*qurb*) and transmission to others that goes beyond the mere juridical responsibility associated with reason and expected in classical jurisprudence. Yet several men of religion concerned exclusively with the limits of jurisprudence (*tasdīd*) or dealing exclusively with the outer dimension of shari'a texts (*ẓāhir al-nuṣūṣ al-shar'iyya*) are confined to harshness (*tashaddud*) and the mention of punishment. These scholars inflict fear rather than communicating love and desire, and are unable to address "the ethics of the self and the secrets of the heart" (*akhlāq al-naḥs wa asrār al-qalb*).⁵⁷ At the same time, Muslims should avoid the reverse excess, which consists of focusing only on the inner self (*bāṭin*). Rather they should give due place to the deeds prescribed by jurisprudence.

In a subsequent book, *Fī Su'āl al-Akhlāq* (On the Question of Ethics), building on *Al-'Amal al-Dīnī wa Tajdīd al-'Aql*, Abderrahmane reclaims the unity between knowledge and ethics against both instrumental amoral rationality harmful to humanity⁵⁸ and the juridicization of the *fiqh* (*taqnīn fiqhī*), which is concerned only with external conformity to legal rules without giving due place to their

ethical meaning and performance.⁵⁹ Following classical Islamic scholars, Abderrahmane does not disconnect the possibility of good action (*'amal ṣāliḥ*) from the good and practical science (*'ilm nāfi*). It is in the reenactment of the unity between the ethical (*takhalluq*) and the legal (*tafaquh*) that the rules of shari'a are performed both in the outer and the inner, for the ethical value (*qīma khulūqiyya*) is the source and origin of the rule prescribed by jurisprudence (*aṣl al-ḥukm al-fiqhī*).⁶⁰ Against a rationality abstracted from ethics, Abderrahmane reclaims a rationality oriented toward, and supported by ethics, in which reason is an act of the heart allowing for the full realization of humankind.

Conclusion

Ethical Episteme, Law, and Contemporaneity

The question of knowledge, and more accurately of Islamic and Western knowledges, has been a recurrent theme throughout this book dealing with shari'a and the Western trajectory of law. Through the study of shari'a, I have explored the possibility of grasping non-Western knowledges. The contemporary perception of Islam in Europe and America has been historically mediated by Western knowledges, institutional arrangements, and practices that operated to reduce Islam to a "religion" as opposed to "science." This conception of what constitutes and does not constitute knowledge proper has also circulated from Europe to Muslim societies, mostly through the coercive colonial encounters of the nineteenth and twentieth centuries.

I proposed here to grasp shari'a and Islam by relying on another mediation (instead of the category of religion): the mediation of Islamic knowledges attached to shari'a, that is, mostly jurisprudence (*fiqh*), the sources of jurisprudence (*uṣūl al-fiqh*), Sufism, *kalām*, and philosophy that structure this book. This approach is not only a way to introduce a methodological difference in the anthropology of religion, the anthropology of Islam, or the comparative study of religions, questioning the category for the way it orients the study of Islam in the West and in predominantly Muslim societies. It is also a claim about the relationship between knowledge(s), beliefs, and practices, and the ways in which those knowledges inform and structure everyday life and are mobilized in times of crises. All those knowledges, whether practical or abstract, dealing with beliefs, the cosmos, epistemic rules, or rules of behavior, inform Muslims' perception of and being in the world.

The claim that shari'a is not "dead" but very much "alive" is substantiated through the study of knowledges produced, transmitted, acquired, and practices

taught and performed within communities that are both epistemic and faithful. While forms of life are usually understood in relation to practices, knowledges, including what is understood by “knowledge,” also entail forms of life. This is true not only for the scholars whose lives are dedicated to knowledge, but more generally for the faithful whose practices assume, and sometimes require, specific knowledges as well as a certain understanding of what knowledge is, and of the relationship between knowledge and practices.

The Islamic revelation came as a knowledge of the relationship between the seen and unseen worlds that was the basis of subsequent (shari‘a) knowledges with distinct objects and evidential regimes, and yet constituting, and sharing, the same Islamic episteme. What sustains an episteme is the circulation between its knowledges and the practices they enable. In an *ethical episteme*, the knowledges attached to this truth regime deal with the self and her relationship to others and to the world-cosmos. Those knowledges, unlike what is considered knowledge proper in contemporary Western societies, are neither meant to separate humans from the world, nor generate the accumulation of material wealth, nor shape a Cartesian power over nature. It is an episteme that nurtures, through the explorations it enables and the limits it sets, the inscription of the self, through embodied and disembodied knowledges and practices, in a community, in the world, and in the cosmos. It deals with what can be seen and unseen, and what can be known and unknown. It is this possibility of an ethical episteme that I studied in this book that could help us think differently about what it means “to know” in contemporary societies.

The study of shari‘a through the multiplicity of knowledges attached to it that structure this book begins with the semantic fact of shari‘a knowledges (*‘ulūm shar‘iyya*), whose plurality is evidenced in the classical Islamic works. My argument, however, is not philological (although it has to start with the textual iterations of shari‘a) but conceptual, in the sense that it is an invitation to think forms of life with and through the distinct and yet overlapping Islamic disciplines. It is also an invitation to think cross-culturally about different normative orders and their relation to knowledge and ethics, by which the law is not only caught in the duality of the prohibitive and the prescriptive but enables us to understand how knowledges are cultivated, inhabited, lived, and grasped through a certain way of knowing.

In that regard, shari‘a in Islam and the law in the West (including their coerced encounter in the nineteenth and twentieth centuries) are normative orders by which communities and polities formulate a self-understanding of the socio-political order underpinned by distinct (and since the nineteenth century, overlapping) conceptions of knowledge and self. I formulated conceptual categories informed by the work of classical Islamic thinkers that structured the book: *episteme*, *jurisprudence*, *spirituality*, *politics*, *reason*. I also formulated conceptual categories to grasp central features of shari‘a: its *fragments* and *incompleteness* when it comes to practices and

the regulation of politics, and the relationship between the *seen* and the *unseen* enabling, and enabled, by shari'a. I relied on the *inner self* (and its relationship to *outer deeds*) as a central entry point to understand the distinctiveness of shari'a, notably through the status of *acts of worship* (in relation to *social transactions and interactions*). I proposed *displacement* and the *new real* (attached to the *present*) as concepts to make sense of shifts attached to contemporary times.

One of the arguments of this book is about the fragmentary practice of shari'a by individual selves in given time-spaces, as well as when it comes to the regulation of the Islamic polity. Yet, I also showed that the study of shari'a knowledges requires bringing them under the *ensemble* of the Islamic episteme in a way that does justice to the distinctiveness of each Islamic discipline while grasping their intertwinement. This intellectual enterprise is necessary to reconcile the need for a collective narrative by which Muslims, through the mediation and transmission of past and present knowledges in institutional and non-institutional spaces, see themselves and present themselves to the non-Muslim Other. Making sense of practices as fragments while holding together the plurality of Islamic knowledges in their wholeness and totality is the way to grasp Muslim contemporaneity.

This approach can contribute to the public debate both among Muslims, and between Muslims and non-Muslims. This means envisaging the possibility of both public and informal education informed by the Islamic episteme, encompassing the plurality of shari'a knowledges rather than a reduction of shari'a to jurisprudence. This means the possibility of teaching humanities in a way that does justice to Islamic culture and civilization without reducing it to a reversed mirror of the West, but also without ignoring its relationship with the West.

Hence, this book is about contemporaneity, that is, by which Western contemporaneity does not preempt the Muslim past. In this shared time-space, whether local or global, the Muslim past is contemporaneous to the Muslim present through the mediation of past and present Islamic knowledges. In this experiential and epistemic space, the critical study of Western contemporaneity is informed by the Islamic episteme. Contemporaneity is not lived the same way by Muslim and Western societies, and reflects unequal relationships of power. And yet, this contemporaneity's current shape can also be shaped by collectives interested in ethical epistemes, offering knowledges that are not reduced to self-sufficient empiricity.

Beyond the Islamic episteme, *The Life of Shari'a* raises possibilities to conceptualize contemporary forms of life in other non-Western cultural ensembles with non-Western knowledges attached to them, without ignoring Western knowledges but in critical dialogue with them. Given the unequal epistemic relationship between the West and the rest of the world, thinking contemporaneity in Western and non-Western settings requires an understanding and mobilization of the categories of thought in non-Western epistemic orders, and calls for the possibility of producing concepts from within non-Western epistemic traditions.

This intellectual proposition is at the junction of critical thought informed by the Western tradition as we, the contemporaries, live in a world that has been shaped by structures, institutions, and rules with specific inclusions and exclusions, pacifying certain socio-political arrangements, and yet generating forms of material and cultural violence. However, critical thought should also be informed by non-Western forms of thought, enabling a de-centering of prevailing knowledges through the inclusion of what has been disqualified as non-knowledges produced in Africa, Asia, or Latin America. This means, unlike the dominant conception of science sticking to value-neutrality, reclaiming the ethical value of knowledge in relation to human and non-human forms of life, and in relation to the understanding and making of the world.

NOTES

INTRODUCTION

1. Shari‘a, through the relationships it enables, is like the rope mentioned in the Qur‘an, *Sūrat Āl-‘Imrān* (103): “And hold firmly the rope of God.”

2. In its oldest occurrences, the word *sharī‘a* refers to the path leading to the source of water. The notions of path (*ṭarīqa*) and journey are also central in Sufism. In the Qur‘an the word “*sharī‘a*” occurs only one time, in *Sūrat al-Jāthiyya*, but with the inclusion of the verbal root *shara‘a* there are five occurrences of its derivatives (*sharī‘a*, *shir‘atan*, *shura‘an*). These occurrences are all mentioned in the context of the plurality of revelations. In *Sūrat al-Mā‘ida* (48), the Qur‘an recognizes the books preceding it (*muṣaḍḍiqān limā bayna yadayhi min al-kitāb*), with the Torah and the Gospel mentioned as sources of guidance. In his commentary (*tafsīr*) of the Qur‘an, the classical scholar-exegete Ibn Kathir understands *shir‘atan* as the path (*sabīla*), and *minhāja* as the *Sunna* (sayings and deeds of the Prophet Muhammad). Ibn Kathir recalls that shari‘a is associated with action and with the path leading to the source of water (*ma yushra‘u fihā ilā al-mā‘*). According to Ibn Kathir, this *āya* (48) is the recognition of the existence of the previous communities who agreed upon the oneness of God (*tawḥīd*) but had different revealed laws (*tashrī‘āt*) as illustrated by a saying of the Prophet Muhammad: “We, the Prophets, are like the brothers from different mothers and have the same *dīn*” (*naḥnu ma‘āshir al-anbiyā‘, ikhwatun li‘alātin, dīnunā wāḥid*). Translated today as “religion,” *dīn* refers more broadly to worship (*‘ibāda*), obedience (*ṭā‘a*), and habitual act (*‘āda*). The *sharā‘i‘* imperatives and proscriptions brought by each of the prophets are not identical. A matter can be proscribed in a given shari‘a and permitted in the other one, or it may be slightly recommended in one shari‘a and highly recommended in another. Classical Islamic scholars also use the word *shar‘* in reference to the knowledge transmitted through revelation in distinction from the knowledge acquired through reason (*‘aql*). In contemporary Arabic, shari‘a is mainly understood as the revealed

law while the derivative *tashrīʿ* refers to the legislative activity of the parliament. The word *qānūn*, used by the Ottoman administration in reference to the sultan's rules, notably in relation to local practices and usages, refers, in modern times, to positive law formulated by the state.

3. *Kalām* is literally “speech” and, as a discipline, refers to the discourse dealing with beliefs and creed, mainly in a dialectical manner assessing speech (about God's attributes, the cosmos, the prophecy, human deeds, etc.) to be refuted or validated. The Qurʾān is also known as *kalām Allah* (God's speech).

4. Derived from the root *faqīh* in reference to the act of understanding and knowing, *fiqh* is jurisprudence, i.e., the knowledge of prescriptions derived from the revealed law's sources. Classical Islamic scholars also use the word *fiqh* in relation to other objects of knowledge such as *fiqh al-qulūb* (the knowledge of the hearts) dealing with spirituality and inner selves.

5. *Al-ghayb* is literally the invisible, what is not perceptible to human senses. The “invisible world,” *ʿālam al-ghayb*, is the world of spiritual beings such as angels, jinn, and evil spirits, but also what is inscribed in the future.

6. *Al-khuluq* is the character proper (good or bad) of a person. While *khaluqa* is the direct root of *akhlāq*, used to refer to the act of being impregnated by something (such as virtuous behavior), *khalaqa* is the act of creating. God is *al-khāliq* (the Creator) and humans are among God's creatures (*al-makhlūqāt*).

7. *Rabbānī* is derived from *rabbā* (to educate). God is *rabb*, the Lord and Owner of the worlds (*rabb al-ʿālamīn*), in reference notably to the world of humans (*ʿālam al-ins*) and the world of jinn (*ʿālam al-jinn*). *Rabbānī* refers also to the one who worships God. The spiritual is also known as *rūḥānī*, and refers to the *rūḥ*, which is soul, spirit, but also the breath of life.

8. In its ancient occurrences, *sāsa* is the act of herding. In its classical use, *siyāsa*, distinct from jurisprudence, consists in governing and managing the community.

9. *Nafisa* is giving birth, and *al-nafasu* is breath; *al-nafs* is synonymous of *rūḥ*, that is, soul and life.

10. The word *ʿamara*, root of *ʿumrān*, is not only the inhabiting of a place (*ʿamara al-makān*) but is also life given and extended by God (*ʿamarahu Allah*), age, and simply life (*ʿumr*).

11. Ibn Khaldun is the Islamic author who has been the most widely read and studied by contemporary social scientists and Islamicists, but, too often, his thought is reduced to a proto-materialist political sociology or a rationalist philosophy of history, for whom the reference to Islamic knowledges such as jurisprudence and Sufism was a mere conventional exercise. Ibn Khaldun has also rarely been studied as a scholar of shariʿa, and even less so as a thinker of the inner self and the invisible realm. See Mahdi 1957; Gellner 1981; Azmeh 1982; Cheddadi 2006.

12. Foucault (1972) is an obvious interlocutor regarding the epistemic conditions informing the production of knowledges in Europe and the shifts enabling the development of the sciences of man. Foucault did not deal with questions of ethics and self in relation to knowledge, but rather as a distinct object of inquiry in his later work (2005).

13. As mentioned above, the word *shariʿa*, in its oldest occurrences, refers to the path leading to the source of water. See n2.

14. Juwayni 1979.

15. The *shahāda* is actually twofold (*al-shahādātān*) and consists in bearing witness that there is no deity but God, and that Muhammad is the messenger of God.

16. Juwayni 1979, 309.

17. Juwayni 1979, 312.

18. In *Totem and Taboo* Freud (1950) gives an anthropological account of a hypothetical foundational event at the origin of morality connecting the collective unconscious with the individual one by exploring the following questions: What is the origin of morality and the distinction between good and evil? How is the genealogy of morals imbricated with the origin of religion and law? How is the efficacy of the law related to the force of the sanction (notably death) and its interiorization? For Freud, the totem is associated with the law of exogamy, which forbids sexual intercourse within the same community (which is like a single family descending from the same totem) and punishes the transgressors with a death penalty.

19. Derrida 1992, 192–99.

20. Drawing extensively on Freud, Fitzpatrick (2001) develops a critique of the modern category of law.

21. Freud's interest in morality and moral imperatives in *Totem and Taboo* can be read as an anthropological and psychoanalytical genealogy of the formulation of Kantian morals as a universal a priori: "Though expressed in a negative form and directed towards another subject-matter, they do not differ in their psychological nature from Kant's 'categorical imperative', which operates in a compulsive fashion and rejects any conscious motive" (1950, x). Although Freud mentions Kant without discussing his moral theory, one can understand *Totem and Taboo* from three different perspectives in relation to Kantian morals. First, it could be read as questioning the a priori Kantian formulation of morality as unable to take into account the psychoanalytical and anthropological dimensions of moral imperatives grounded in a foundational moment (the murder of the father and the institution of the totem). Second, it could be understood as an embrace of the Kantian moral law as the rational formulation of the civilized man emancipated from his own primitiveness and any form of (totemic) moral heteronomy. Third, the Kantian imperative, and more specifically, the sense of duty, is itself an object of psychoanalysis for Freud. Fulfilling a duty only for its sake is not the result of a rational decision in which the free will of the subject is displayed. It is rather a compulsion that needs to be analyzed and related to the motives buried in the collective unconscious.

22. Vattel 1993, 301–2.

23. Vattel 1993, 308.

24. On the emergence of the notion of territory, see Elden 2013.

25. See Winichakul 1997.

26. On Hobbes's materialism and epistemology see Shapin and Schaffer 1985.

27. Heidegger 1977, 134.

28. On the development of Church law and ecclesiastical power in medieval Christianity, see Berman 1983.

29. Said 1978.

30. Among others, Clifford 1986; Bhabha 1990.

31. Asad 1993, 1.

32. Chakrabarty 2000.

33. While the thesis of shari‘a’s demise has been developed mainly by Wael Hallaq in *Shari‘a* (2009) and *The Impossible State* (2012), it is a central premise in the academic study of contemporary Islam. I discuss this thesis extensively in chapter 6.

34. Austin 1975.

35. Koselleck 2004.

36. Anderson 1983.

37. Rosa 2013.

38. Koselleck 2004; Rosa 2013.

39. Colonization as a material process of settlement, starting with the occupation and expropriation of land, is a history of forced displacement of colonized populations. Wars of the twentieth and twenty-first centuries have displaced an unprecedented number of people and prompted the emergence of new legal categories in the post–World War II humanitarian language differentiating between the refugee, the asylum seeker, the forcibly displaced, the internally displaced person, the immigrant. . . .

40. Ibn Khaldun 2005, 69.

41. Ibn Khaldun 2005, 57.

42. Ibn Khaldun 2005, 185.

43. Building, through Heidegger’s etymological discussion of the word in German (*Buan*), means also to stay in place, and in old German, “to take care,” while in Gothic it means “to be at peace” (1975, 145).

44. Heidegger 1975, 159.

45. Heidegger 1977b.

46. In *The Order of Things*, Foucault traces back this shift in Europe to the seventeenth century: “The profound kinship of language with the world was thus dissolved. The primacy of the written word went into abeyance. And that uniform layer, in which the seen and the read, the visible and the expressible, were endlessly interwoven, vanished too. Things and words were to be separated from one another” (1989, 48).

47. Islamic philosophers would rely on revealed speech to support some of their truth claims, but they would not necessarily build their entire scholarly inquiry into evidence taken from the Qur’an and the Sunna.

CHAPTER 1. JURISPRUDENCE OF THE REVOLUTION

1. This chapter is a substantially modified version of Belal 2018.

2. Adorno 1978; Horkheimer 1978; Foucault 1997.

3. Foucault 1997.

4. Foucault 1986.

5. Foucault 1997, 96.

6. Mahmood 2005; Hirschkind 2006; Agrama 2012; Hallaq 2013.

7. Hallaq 2013, 11.

8. Mahmood 2005, 29.

9. Mahmood 2005, 30.

10. Foucault 1997, 287.

11. Qaradawi 2012.

12. On Yusuf al-Qaradawi’s thought and influence, see Graf and Skovgard-Petersen 2009.

13. In modern times, the control of fatwa issuance by the state in several Muslim majority countries makes it more difficult for muftis to freely give their opinions about the action of the government and other issues considered “political.” On these institutional developments, see Petersen 1997.

14. Schacht 1964.

15. Masud et al. 1996; Johansen 1999.

16. Subfields of Islamic jurisprudence since the beginning of the twentieth century include all kind of themes interesting the life of contemporary Muslims: the “jurisprudence of the family” (*fiqh al-usra*), or the “jurisprudence of Islamic economy” (*fiqh al-iqtisād al-islāmī*).

17. Ahmed al-Raisuni, another influential Islamic scholar from Morocco, has also used the same qualification as a title for a book collecting his fatwas on the 2011 demonstrations (2013).

18. Qaradawi 2012, 5. *ʿIbra* is used in reference to moral lessons that can be learned from stories (*qīṣaṣ*) narrated in the Qurʾan or used by historians like Ibn Khaldun to stress the ethical dimension of history in relationship to both human action and divine intervention.

19. Qaradawi 2012, 146.

20. In the *ḥadīth mursāl*, the transmission is interrupted at the level of the Companions (*Ṣaḥāba*) of the Prophet.

21. In the *ḥadīth munqaṭiʿ*, the transmission is missing a link at the level of the successors (*tābiʿin*), i.e. at a later stage of transmission than the *ḥadīth mursāl*. The reliability of *ḥadīths* can vary according to different criteria, including the reference to a particular authority, the number of reports, the reliability of the reporters, and the chains of transmission.

22. Agrama 2012, 182. Similarly, as discussed in chapter 4, the study of prayer (*ṣalāt*) by Saba Mahmood (2005) missed the enabling relationship between jurisprudential knowledge (*fiqh*) and ethics.

23. ʿAmer 2012, 45.

24. Busnawi 2010, 16. This is a Hanafi book of jurisprudence taught at al-Azhar Mosque.

25. Ibn Taymiyya 2011.

26. Qaradawi 2000b.

27. Qaradawi 2000b.

28. Ghazali 1916.

29. Abderrahmane 2000.

30. Weber 1978, 653. For an extensive discussion of Weber’s study of shariʿa, see chapter 13.

31. Johansen 1999; Rosen 2000.

32. Geertz 1983.

33. In the courtroom, the assessment of intent involves a series of assumptions about the relationship between interiority and exteriority; see Johansen 1999.

34. Busnawi 1987.

35. The title alludes to “the science of the path to the hereafter” (*ʿilm ṭariq al-ākhirā*) initiated by Ghazali (1916). It refers also to the twin dimension of shariʿa, which is both the law and the path.

36. Qaradawi 2000a, 26.

37. The verb *faqaha* refers more specifically to the grasping faculty of men.

38. Qaradawi 2000a, 27.
39. Qaradawi 2011, 55.
40. Qaradawi 2012, 59.
41. Qaradawi 2012, 160.
42. Qaradawi 2012, 159.
43. On *naṣiḥa* and sermons see Belal 2006, Hirschkind 2006.
44. Al-Qaradawi starts his sermon in an unusual way by speaking not only to Muslims, but also to the Copts. He insists several times upon the solidarity between Muslims and Copts and their ability to overcome confessional rivalries. “In Tahrir Square, our Copt brothers were standing to protect their Muslim brothers when they were praying, and I invite them, not only to protect them, but to prostrate with them (*yasjidū ma‘ahum*) as a way to thank God the Almighty, for the prostration (*sujūd*) is relied upon by both Muslims and Christians” (Qaradawi 2012, 173). For al-Qaradawi (1996), faith is not specific to Islam, but shared by other religions.
45. Qaradawi 2012, 5.
46. Ali Gom‘a’s interview on Egyptian channel Dream TV, www.youtube.com/watch?v=88XF7b9rjdM, last accessed April 15, 2017.
47. On the Saudi Council of Scholars’ fatwa declaring the demonstrations unlawful and issued on March 7, 2011, see <http://www.alriyadh.com/611507>, last accessed April 16, 2017. Previous famous fatwas prohibiting demonstrations have been authored by prominent Salafi scholars, for example the Saudi Muhammad Ibn al-‘Uthaymeen or Nasir Din al-Albani, who was based in Syria and Jordan.
48. See, for example, the fatwa authored by the Egyptian Salafi scholar Mustapha al-‘Adawi, at www.youtube.com/watch?v=pb6dxzRWNdo, last accessed April 15, 2017. In Egypt, Salafi scholars did not have a unified position and a few relied on an argumentation similar to Gom‘a’s to prohibit their followers to demonstrate against Mubarak. Several other Salafi scholars, like Muhammad ‘Abd al-Maqsud, endorsed the demonstrations, and a significant number of demonstrators were affiliated to the *Salafiyya* movement. Still other prominent Egyptian Salafi scholars, such as Yasir al-Burhami and Muhammad Hasan, distanced themselves from the demonstrations at the very beginning, but subsequently changed their position about the revolutionary event.

CHAPTER 2. LAW, POWER, AND SHARI‘A’S INCOMPLETENESS

1. Hobbes 2008; Rousseau 1978.
2. Rawls 1971; Habermas 1996.
3. Kelsen 1967.
4. Butler 2015.
5. Hobbes 2008.
6. Elden 2013.
7. Vattel 1993.
8. Hobbes 2008; Shapin and Schaffer 1985.
9. Berman 1983; Kantorowicz 1957; Schmitt 2010.
10. Arendt 1963.
11. On early Shi’ism, see Amir-Moezzi 1994; Arjomand 1988.

12. Kulayni 2007, 1:116.
13. Kulayni 2007, 1:102–104.
14. Kulayni 2007, 1:118.
15. Kulayni 2007, 1:117.
16. Kulayni 2007, 1:105–10.
17. Kulayni 2007, 1:118.
18. Kulayni 2007, 1:125–26.
19. Kulayni 2007, 1:153–55.
20. Kulayni 2007, 1:205.
21. Karaki was close to the Safavid ruling circles, notably the dynasty's founder Ismail and his successor Tahmasp.
22. Karaki 1989, 142. On this shift, see Amir-Moezzi 1994.
23. Karaki 1989, 142.
24. On the emergence of scholars as a community at the end of the second century of Islam, see Zaman 1997; Melchert 1997; Brockopp 2017.
25. On Ibn Taymiyya's politics, see Anjum 2012.
26. Ibn Taymiyya 2008, 129.
27. On Mawardi, see Mikhail 1995.
28. Mawardi 1981, 46.
29. Mawardi 1981, 152.
30. Mawardi 1981, 145.
31. Mawardi 1981, 146.
32. Mawardi 1981, 186.
33. Mawardi 1981, 256.
34. On Juwayni and his milieu, see Siddiqi 2019.
35. Juwayni 1979, 275.
36. Juwayni 1979, 279–84.
37. Juwayni 1979, 285.
38. Juwayni 1979, 307.
39. Juwayni 1979, 309.
40. Juwayni 1979, 312.
41. Ibn Khaldun 2005, 328.
42. Ibn Khaldun 2005, 375.
43. Ibn Khaldun 2005, 377.
44. For a study of the new political language developed by nationalist elites in Arab societies, see Hourani 1983.

CHAPTER 3. SPIRITUAL ETHICS AND THE UNSEEN WORLD

1. A distinct set of writings deal with ethics (*akhlāq*) without being centered on the cultivation of spirituality but nevertheless entailing engagement with the revelation and the revealed law such as *The Refinement of Ethical Conduct* (*Tahdhīb al-Akhlāq*) by Miskawayah or *Nasirean Ethics* (*Akhlāq-i Nāṣirī*) by Nasir al-Din al-Tusi.
2. See, for example, Ibn Khaldun's classification of knowledges in the *Muqaddima* (2005).

3. Descola 2013.
4. Kant 1996.
5. Weber 1946.
6. Heidegger 1977.
7. “The fundamental event of the modern age is the conquest of the world as picture. The word “picture” (*Bild*) now means the structured image (*Gebild*) that is the creature of man’s producing which represents and sets before” (Heidegger 1977, 132).
8. The encounter with the *Shādhiliyya* took place in Cairo in 2013–2014. The *Shādhiliyya* is associated with the name of its Moroccan founder Abu al-Hasan al-Shadhili (d. 1258). For an ethnography of the *Shādhiliyya* in Egypt see Gilsenan 1973.
9. ‘Ashira al-Muḥammadiyya 1993, 10.
10. ‘Ashira al-Muḥammadiyya 1995, 18.
11. Khidr is a figure of wisdom associated with Moses in the Quran, *Sūrat al-Kahf*. See below.
12. As the root of *ḥaqīqa*, *ḥaqqa* is ascertaining the truth of a matter. *Ḥaqq* is both truth, right and justice. In the Sufi language, *al-ḥaqīqa* is the inner truth, and deals with the soul (*rūḥ*).
13. Ibn Khaldun 2005, 1:146.
14. Ibn Khaldun 2005, 1:343.
15. Ibn Khaldun 2005, 1:344.
16. Ibn Khaldun 2005, 1:345.
17. Qaradawi 2000a, 1:155.
18. Qaradawi 2000a, 1:155.
19. Qaradawi 2000a, 1:169.
20. I attended Muhammad Muhanna’s lesson in June 2014 at the ‘*Ashīra Muḥammadiyya*, Cairo.
21. The word *taqwā* refers both to God-fearing piety and spirituality.
22. Zarruq 1976, 7.
23. Zarruq 1976, 9.
24. Belal 2011, 123–206.
25. Zaki Ibrahim 1989, 13.
26. Nawawi 1971.
27. Zaki 1989, 377.

CHAPTER 4. THE SPIRITUAL TOPOGRAPHY OF THE SELF IN CLASSICAL ISLAM

1. Ahmed 2015.
2. Ahmed 2015, especially chapters 2 and 6.
3. Ahmed 2015, 120–21.
4. Ahmed 2015, 531.
5. Ahmed 2015, 285.
6. Ahmed 2015, 120.
7. Mahmood 2005.
8. On Abu Talib al-Makki, see Yazaki 2013.

9. Makki 1991, 265.
10. Makki 1991, 326.
11. Makki 1991, 164.
12. On al-Ghazali, see Moosa 2005; Griffel 2009.
13. Ghazali 1997, 32.
14. Ghazali 1916, 1:8.
15. Ghazali 1916, 34.
16. Ghazali 1916, 23.
17. Ghazali 1916, 144.
18. Ghazali 1916, 135.
19. “[The Prophet Muhammad] was talking to us and we were talking to him, but when the time of prayer occurred, it was like he did not know us and we did not know him.”
20. “O Moses, if you remember Me, remember Me while you are moving your members, and be absorbed in a state of awe (*khāshi‘an*) and serenity (*muṭma’in*), and make your tongue preceding your heart [. . .].”
21. Ghazali 1916, 145.
22. Ibn Khaldun 1996, 44–46.
23. Ibn Khaldun 1996, 49.
24. Ibn Khaldun 1996, 55–59.
25. Ibn Khaldun 1996, 60–62.
26. Ibn Khaldun 1996, 101.
27. Ibn Khaldun 1996, 65–68.
28. Ibn Khaldun 1996, 85–87.

CHAPTER 5. TRUTH OF THE LAW, TRUTH OF THE SELF, AND DIS-EMBODIMENT

1. Weber 1946; Horkheimer and Adorno 2002.
2. Mahmood 2005, 113–17.
3. Mahmood 2005, 149.
4. Mahmood 2005, 82.
5. Mahmood 2005, 157.
6. As al-Qaradawi writes, each Muslim should know the fundamental elements of the science of ethics (*‘ilm al-akhlāq*) that allows her/him to orient her/his moral behavior according to shari‘a rules (*ḍawābiṭ al-shar‘*), see Qaradawi 2000a, 28.
7. Taylor 1989.

CHAPTER 6. WORSHIP, SOCIAL INTERACTIONS, AND SHARI‘A’S DISPLACEMENT

1. The idea of a lack of constitutive distinctions between religion, law and ethics in Islamic jurisprudence can be traced back to the Dutch Orientalist Hurgronje: “Le *fiqh* se distingue du droit romain et du droit moderne en ce sens que c’est une déontologie dans le sens le plus large du mot et ne se laisse pas diviser en religion, ou morale, et droit” (1957, 261). For Hurgronje, the religious is equated with the acts of worship: “the religious parts proper

of the *fiqh*, the ‘five pillars’ and connected duties are in the nature of things impervious to all efforts to adapt them” (74). The lack of differentiation between religion and law informs Max Weber’s (1979) comparative sociology of law and the category of “sacred law.” See also the French orientalist and jurists like Milliot (1953) and Bousquet, for whom “la Loi musulmane possède un haut degré un des caractères des législations primitives où droit, morale, et religion sont intimement confondus” (1949, 8). Opposing the “legal” “proper” to ritual practices, Bousquet studied the acts of worship as the “rituel orthodoxe de l’Islam.”

2. Most legal orientalist were associated with the colonial project of the nineteenth century promoting “good” and efficient government on the basis of differentiation and separation. One of the main problems faced by colonial viceroys and officers was to differentiate “religion” from “law” in Islam so as to institute a space of rule production enabling colonial governmentality. At the same time, the distinction between the “religious” and the “legal” in *fiqh* has widely circulated between legal Orientalism and colonial administration.

3. Schacht 1964, 113.

4. Schacht 1964, 114.

5. Zwaini et al. 1994, vii.

6. The *Oxford Bibliography* on *Shari‘a*, edited by Andrew March (2011), includes sections on “*Uṣūl Al-Fiqh*,” “Authority, ‘Ulama, Ijtihad,” “History of Islamic Law,” and “Islamic Law as State Law in Modernity.”

7. Edited by Anver M. Emon and Ahmed Rumei, *The Oxford Handbook of Islamic Law* (2018) includes five parts: (i) Discipline and Critique, (ii) Legal Theory and Institutions, (iii) Origins, Empires and States, (iv) Regional Variations, (v) Substantive Legal Areas.

8. On the critique of the category of ritual and its genealogy, see Asad 1993.

9. Moore 2004, 346.

10. Moore 2004, 1.

11. Katz 2013, 7.

12. Mahmood 2005, 120.

13. See chapter 5 for an extensive discussion of Saba Mahmood’s *Politics of Piety*.

14. The lesson I attended was delivered in July 2015.

15. Mahmood 2005; Hirschkind 2006; Agrama 2012; Hallaq 2013.

16. The relationship between acts of worship and social relations raises the twin questions of time and change related to the 2011 Revolution. If the good in the community requires an endless work of giving shape to the self through worship, the unexpected revolutionary event comes with the promise of a better life that is not necessarily in harmony with the time of improvement of the ethical self. Although the *maw‘īza* of Sheikh Mamduh does not deal explicitly with the revolution, it is uttered in a post-revolutionary context, after the president Morsi has been ousted. Revolutionary change and ethical improvement of the self are not necessarily in contradiction with each other for the former requires self-sacrifice for the well-being of the community. But it may also be understood as an event that will bring the good to the community without involving any work on the self. In this context, the task of the Islamic scholar is to recall that whatever good and evil happens in the community, it should never lead to neglect the timeless labor on the self through worship and her relationships with others.

17. Kelsen 1967, 2.

18. Kelsen 1967, 34.

19. Kelsen 1967, 32.

20. Hobbes 2008, 362.

21. Hobbes 2008, 268–269.

22. For example, the significance and authority of al-Qaradawi's fatwas authorizing peaceful demonstrations against the president Mubarak in 2011 (see chapter 1), or more generally of Islamic legal opinions dealing with everyday life, cannot be grasped if one sticks to the shari'a's demise narrative or to the claim that state law successfully encompasses everything. The situation of crisis and legal uncertainty (if not failure and anomia) in an event such as the revolution highlighted the authority of the fatwa. Al-Qaradawi's fatwa was meaningful and authoritative for several Muslims because shari'a was *already* meaningful and authoritative for them in their everyday life *before* the 2011 Revolution in a time where state law was considered effective.

23. Johansen 1999, 43.

24. Johansen 1999, 57.

25. Johansen 1999, 59.

26. Johansen 1999, 69–70.

27. Johansen 1999, 33.

28. Johansen 1999, 59.

29. Ibn Qayyim al-Jawizyya 2013.

30. Katz 2013, Rapoport 2005.

31. Hallaq 2009, 1–23.

32. Hallaq 2009, 549.

33. Hallaq 2009, 367.

34. Hallaq 2009, 543–547.

35. Abu Hanifa 1905.

36. "Occupying as much as one-quarter to one-third of the entire body of works [of *fiqh*]" (Hallaq 2009).

37. Hallaq 2013, 117–18.

38. Latour 1993, 73. "The antimoderns firmly believe that the West has rationalized and disenchanting the world, that it has truly peopled the social with cold and rational monsters which saturate all of space, that it has definitively transformed the premodern cosmos into a mechanical interaction of pure matters. But instead of seeing these processes as the modernizers do—as glorious, albeit painful, conquests—the antimoderns see the situation as an unparalleled catastrophe" (116).

39. On effectiveness as one of the distinctive features of the moderns' conception of the moral, see MacIntyre 1984; Habermas 1996.

CHAPTER 7. ISLAMIC LEGAL KNOWLEDGE AND THE NEW REAL

1. Qaradawi 1974, 13.

2. Qaradawi 1974, 21.

3. Qaradawi 1974, 21.

4. Qaradawi 1974, 21.

5. Qaradawi 1974, 23.

6. Ibn Taymiyya 1951.

7. Qaradawi 1974, 41.
8. For example, Rashid Rida in the magazine *al-Manār*, published in Cairo from 1898 to 1940.
9. Qaradawi 2001, 13.
10. Qaradawi 2001, 72.
11. Qaradawi 2001, 45.
12. Qaradawi 2001, 32.
13. Ibn Al-Qayyim al-Jawziyya 1968, 1:87–88.
14. Rida 1984, 7.
15. Ibn ‘Abidin 2000, 1:4.
16. Ibn ‘Abidin 2000, 1:25.
17. Ibn ‘Abidin 2000, 1:160.
18. Ibn ‘Abidin 2000, 1:226.
19. Ibn ‘Abidin 2000, 1:226.
20. Ibn ‘Abidin 2000, 1:226.
21. Ibn ‘Abidin 2000, 1:253.
22. Ibn ‘Abidin 2000, 1:256.
23. See, for example, Albert Hourani’s (1983) assessment.
24. Qaradawi 1986, 24.
25. Qaradawi 1986, 25.
26. Qaradawi 1986, 28.
27. Rida 1984, 10.
28. Rida 1984, 14.
29. Rida 1984, 60.
30. Rida 1984, 61.
31. Rida 1984, 10.
32. Qutb 1988, 191.
33. Qutb 1988, 197.
34. Qutb 1988, 190.
35. For Qutb (1988, 190–96), “Islam always faces the real (*al-wāqi‘*) but never submits to it. Rather, Islam makes the real submit to its vision, its path and its commands and keeps from what is natural [. . .] and expels what is corrupted.
36. Asad 1986, 20.
37. Asad 1986, 21.

CHAPTER 8. *KALĀM* AND THE ISLAMIC EPISTEME

1. For Geertz (1968, 1), “Our problem, and it grows worse by the day, is not to define religion, but to find it.”
2. Asad 1986, 11–12.
3. Following this understanding, “tradition stresses embodied, critical learning rather than abstract theorization” (Asad 2015, 166–68).
4. MacIntyre 1984, 187.
5. “By a ‘practice’ I am going to mean any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are

realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended” (MacIntyre 1984, 187).

6. “So are the enquiries of physics, chemistry and biology, and so is the work of the historian, and so are painting and music” (MacIntyre 1984, 187).

7. Asad 2015, 179.

8. See Masud, Messick, and Powers 1996.

9. Johansen 1999.

10. For a general introduction on *kalām*, see Van Ess (2017–2020). See also Wolfson 1976; Winter 2008; Schmidtko 2016.

11. Atomism was widely shared among *kalām* scholars but contested by prominent philosophers such as Ibn Sina.

12. On *kalām*’s physics and more specifically atomism, see Dhanani 1994.

13. Ghazali 2003, 202.

14. Ghazali 2003, 205.

15. Ibn Sina 1953–1980.

16. See ‘Abd al-Jabbar’s *Al-Mughnī*, whose fourth volume is dedicated to the refutation of the possibility of seeing God. In addition to the Mu‘tazila, the Zaydi, the Khawārij, and most of the Murji‘a, reject this possibility. See ‘Abd al-Jabbar 1950–1969, 4:139.

17. ‘Abd al-Jabbar 1950–1969, 4:140.

18. Ghazali 2003, 274.

19. Ghazali 2003, 275.

20. Ghazali 2003, 282–83.

21. Ghazali 2003, 284.

22. Ghazali 2003, 75–79.

23. On the use of logic in *kalām*, see Perler and Ulrich 2005. Whether the recourse to the science and categories of logic in *kalām* works became widespread following al-Ghazali is a matter of scholarly debate. One of the earliest known Arabic works on logic is attributed to Ibn al-Muqaffa‘ (d. 759); see Hasnawi and Hodges 2016.

24. Razi 1977, 19.

25. Razi 1977, 21.

26. On al-Ghazali’s views on *kalām*, see Frank 1994; Griffel 2009.

27. Ghazali 2003, 81.

28. Ghazali 2003, 95–96.

29. Ghazali 2003, 486.

30. On the relationship between *kalām* and philosophy, see Frank 1992.

31. Ibn Sina, 1953–1980, 4–5. On Ibn Sina’s views on *kalām* see Gutas 2005.

32. The philosophical study of God associated with the study of the first cause was initially formulated by al-Kindi in his *First Philosophy*, defined as the knowledge of the truth of things (‘*ilm al-ashyā’ bi-ḥaqqā’iqihā*) that cannot be reached without inquiring into its cause (‘*illa*), which entails the knowledge of the First Truth Who is the cause of all truth (‘*ilm al-ḥaqq al-awwal al-ladhī huwa ‘illat kulli ḥaqq*). See Kindi 1948, 77–78.

33. The root *qāsa* refers to the act of relating and measuring one thing to another, entailing a common standard enabling an analogical or syllogistic relationship.

34. Ibn Rushd 1994, 87–88.
35. Ibn Rushd 1994, 64–69.
36. *Naṣrat al-ārā' wa al-af'āl al-maḥdūda allatī ṣarraḥa bihā ṣāhib al-milla wa tazyīf kullu mā khallafahā bi-l-aqāwīl*. See Farabi 1968, 107–8.
37. Ibn Rushd 1998, 99.
38. Al-Ḥashwiyya, as they are called by their adversaries, are associated with the Hanbalite and the rejection of reason in formulating teachings regarding matters covered by the revelation. Al-Bāṭiniyya refers to the Shi'a but also, in Ibn Rushd's text, to the Sufis, as both are interested primarily in the inner dimension of faith. Al-Ash'ariyya is identified with the mainstream creed of the Sunni.
39. Ibn Rushd 1998, 111.
40. Ibn Rushd quotes, at the beginning, of *al-Kaṣh' an al-Adilla fī 'Aqā'id al-Milla*, Ali, the fourth caliph, cousin, and son-in-law of the Prophet Muhammad: "Address the people with what they understand."
41. *Da'ā al-nās fihā ilā al-taṣdīq bi-wujūd al-bārī subḥānahu bi-adilla 'aqliyya*. Ibn Rushd also refutes also the Sufis and the Shi'a, under the category of *Bāṭiniyya*, in reference to the inner (*bāṭin*).
42. For Ibn Rushd, atomism's proponents have been confusing size and quantity when illustrating the idea of undividable parts by comparing the size of an elephant with an ant's.
43. Iqbal 2013, 8–9.
44. Iqbal 2013, 12.
45. Iqbal 2013, 12.
46. Iqbal 2013, 33.
47. Iqbal 2013, 37.
48. Iqbal 2013, 37.
49. Iqbal 2013, 57.
50. As discussed above, Iqbal is, however, interested in human power over nature as part of a movement to achieve the relationship between the inner self and the external world.
51. Iqbal 2013, 94.
52. Iqbal 2013, 73.
53. Iqbal 2013, 134.
54. Iqbal 2013, 149.
55. Iqbal 2013, 155.
56. Laroui 1967.
57. Trained in Western philosophy, Hassan Hanafi presents himself as a *faqīh* (scholar) participating in the renewal of religion, in reference to a hadith stating that every hundred years God sends to the community of believers someone who will renew their religion. For Hanafi this hadith, understood in contemporary terms, refers to the preservation of the people's interests (*anā faqīh min fuqahā' al-muslimīn ujjaddidu lahum dīnuhum wa urā' i maṣāliḥ al-nās*). See Hanafi 1988, 40.
58. Hanafi 1988, 10.
59. Hanafi 1988, 17.
60. Hanafi 1988, 20.
61. *Kayfa tasbaḥu al-'aqida bā'ithan thawriyyan 'inda al-jamāhīr wa asāsan nazariyyan li-fahmihim lil-'ālam?* (Hanafi 1988, 39).

62. Hanafi 1988, 11.
63. Hanafi 1988, 70.
64. *Al-‘ilm taḥlil ‘aqlī lil-mawḍū‘āt aw waṣf ‘ilmī lil-ṣawāhir li-idrāk al-ḥaqā‘iq al-ṣūriyya wa al-māddiyya* (Hanafi 1988, 96).
65. Hanafi 1988, 107.
66. The differentiation between forms of Qur’anic speech is a central component of the classical discipline of *uṣūl al-fiqh* in relation, notably, to imperative forms defining prescriptions and proscriptions, literal and metaphorical meaning of Qur’anic utterances.
67. These works are also distinct from classical commentaries on the Qur’an that usually proceed in a linear manner, from the first *Sūra* to the last.

CHAPTER 9. REVEALED SPEECH AND THE SOURCES OF JURISPRUDENCE

1. “Shari‘a principles” were mentioned as the main source of legislation in the 1971 constitution.
2. Shafi‘i 2014, 112.
3. For al-Shafi‘i (2014, 53), the reference to “shari‘a principles” includes four elements that may inspire legislation: (i) the sources of jurisprudence (Qur’an, Sunna, consensus, analogical reasoning, *istiḥsān*, *istiṣlāḥ*); (ii) the general rules of jurisprudence, including “not being harmed nor harming others” (*lā ḍarar wa lā ḍirār*)” or “the usage prevails (*al-‘āda muḥkama*)”; (iii) the five shari‘a ends including the protection of the self, religion, reason, offspring and property; and (iv) the rules (*qawā‘id*) relied upon by scholars (*mujtahidūn*) in their effort to extract norms from shari‘a sources (for example the collectivity’s interest prevails over the individual’s interest).
4. In the first passages of his *al-Ijtihād fī al-Shari‘a al-Islāmiyya*, al-Qaradawi recalls that *ijtihād* gives shari‘a its “fertility” (*khuṣūba*) and allows it to respond perpetually to new conditions of time, space and human change (2013, 6).
5. On the discipline of *uṣūl al-fiqh*, see Kamali 1991, Hallaq 1997, Weiss 1998.
6. Ghazali 1997, 192.
7. Ghazali 1997, 189.
8. On Shafi‘i see Lowry 2007.
9. On the early constitution of the discipline of jurisprudence, see El Shamsy 2013.
10. Malik’s *Muwaṭṭa’* offers another way to deal with the relationship between speech and deeds. While Muhammad Ibn Idris al-Shafi‘i, in the *Risāla*, offers a method of organization of the sources of revealed speech within a hierarchy of authority, and delineates the procedures out of which prescriptions may be “extracted” from, or deeds assessed against, what is instituted as the sources, Malik’s *Muwaṭṭa’* is rather an attempt to record Islamic prescriptions according to the practices of the community of Medina, considered to be the most faithful to the Prophet’s example. If the *Risāla* grounds the search for truth—or more precisely, the true prescription—in the relationality of the scholar with revealed speech orally transmitted and inscribed in texts, and instantiates rule production as a generative process, the *Muwaṭṭa’* encompasses the rules to be followed by Muslims as already embodied practices transmitted from Medina’s community. On Malik, see Dutton 1999.
11. Shafi‘i 1999, 37.

12. Shafi'i 1999, 39.
13. Shafi'i 1999, 47.
14. Shafi'i 1999, 48.
15. Shafi'i 1999, 61.
16. Shafi'i 1999, 83.
17. Ghazali 1997.
18. Ghazali 1997.
19. Ghazali 1997, 528.
20. Ghazali 1997, 31.
21. On Islamic scholars in contemporary times, see Zaman 2002.
22. Qaradawi 2013, 232.
23. Qaradawi 2013, 240.
24. On the "rationalization" of shari'a in contemporary times see chapter 13.
25. Qaradawi 1997, 53.
26. On Shatibi, see Masud 1995.
27. Shatibi 2005, 1:24.
28. Shatibi 2005, 1:24.
29. Shatibi 2005, 1:25.
30. The Moroccan scholar Ahmed Raissouni is among the most prominent commentators of al-Shatibi's work and a proponent of both the *fiqh maqāṣidī* (jurisprudence based on the ultimate goals of shari'a) and the *fikr maqāṣidī* (teleological thought). See Belal 2011, 207–63.

CHAPTER 10. CANON LAW AND THE CHRISTIAN SELF

1. Taylor 1989, 519.
2. Taylor 1989, 62.
3. Augustine 2010, 6.
4. On Augustine, see Gilson 1960; Rist 1994.
5. Augustine 2001, 80.
6. Augustine 2001, 78.
7. Augustine 2001, 76.
8. Augustine 2001, 64.
9. Augustine 2001, 73.
10. Augustine 2001, 81.
11. Augustine 2001, 87.
12. Augustine 2001, 97.
13. Augustine 2001, 101.
14. Augustine 1876, 157.
15. Augustine 2001, 72.
16. Justinian, *Code*, quoted in Lee 2013, 256–57.
17. On Gregory the Great, see Markus 1997.
18. Gregory I 1950, 86–88.
19. Gregory I 1950, 21.
20. Gregory I 1950, 27.

21. Gregory I 1950, 35–36.
22. Gregory I 1950, 28.
23. Gregory I 1950, 64.
24. Gregory I 1950, 44.
25. Gregory I 1950, 88.
26. For a detailed study of *Etymologies*, see Henderson 2007.
27. Berman 1983.
28. Berman 1983.
29. On the development of the notion of *forum internum* in contradistinction to *forum externum* from the twelfth century onward, see Goering 2004.
30. Fordham University, *Medieval Sourcebook*, <https://origin-rh.web.fordham.edu/Hallsall/basis/lateran4.asp>, last accessed September 28, 2024.
31. Murray 1993. For a discussion of the “Carolingian dichotomy” see also Hamilton 2001 and Frey 2009.
32. “Open the secret of your iniquity through confession. What you have done in secret is known to God. If the tongue does not avow them, your conscience will not be able to conceal them” (Driscoll 1998, 51).
33. See the text of the tract in Berman 1983, 184.
34. Berman 1983, 191–92.
35. For an overview of the development of canon law, see Brundage 1995.
36. Gratian 1993.
37. Gratian 1993, 4–5.
38. Gratian 1993, 10.
39. Gratian 1993, 11.
40. Gratian 1993, 12.
41. Gratian 1993, 10.
42. Gratian 1993, 11.
43. Gratian 1993, 4.
44. Gratian 1993, 29.
45. Gratian 1993, 33–34.
46. Kuttner 1980.
47. Salisbury 1990, 32.
48. Salisbury 1990, 35.
49. Salisbury 1990, 40.
50. Salisbury 1990, 41.
51. Salisbury 1990, 25.
52. On Aquinas see Davies 1992.
53. Thomas Aquinas 1993, 191.
54. Thomas Aquinas 1993, 117.
55. Thomas Aquinas 1993, 209.
56. Thomas Aquinas 1993, 215.
57. Thomas Aquinas 1993, 171.
58. Thomas Aquinas 1993, 316.
59. Thomas Aquinas 1993, 324.
60. Southern 1970.

61. Marsilius 2005, 53.
62. Marsilius 2005, 214.
63. Marsilius 2005, 34–35.
64. Marsilius 2005, 363–64.

CHAPTER 11. THE LAW OF CONVERSION

1. Taylor 1989, 2007.
2. Bague 2005, 176–77. On the primacy and unprecedented scope of canon law see Berman 1983 and Brundage 1995.
3. Bague 2005, 312.
4. Davenport 1917, 75–78.
5. The “Royal Orders Concerning Indians” issued in 1493, four months before his departure on the second voyage, instruct Columbus to convert Indians to Christianity on the grounds that the Indians lack an identifiable normative system: “Since he found them to be people without law or sect and therefore very ready for conversion to our holy Catholic faith” (Gibson 1968, 41).
6. For an English translation see Helps 1900, 264–67.
7. Constable 1997, 353.
8. On Vitoria, the Spanish scholastics, and the colonization of the Americas, see Pagden 1982.
9. Vitoria 1991, 348.
10. Vitoria 1991, 350.
11. Vitoria 1991, 285.
12. Vitoria 1991, 287.
13. Vitoria 1991, 77.
14. Vitoria 1991, 78.
15. Vitoria 1991, 81.
16. Vitoria 1991, 58.
17. Vitoria 1991, 53.
18. Worldly powers, particularly if they are guided by ecclesiastical power, have the authority to direct men to virtue as princes may enact “laws concerning moral goodness, such as prohibiting blasphemy, sodomy, and so on,” and civil laws, when they deal with the “burning of heretics,” can also contribute to achieve “supernatural good” (Vitoria 1991, 167).
19. Suarez 2015, 13.
20. Suarez 2015, 14–15.
21. Suarez 2015, 55–57.
22. Suarez 2015, 74.
23. Suarez 2015, 190.
24. Suarez 2015, 201.
25. Suarez 2015, 252.
26. Suarez 2015, 148.
27. Suarez 2015, 96–98.
28. Suarez 2015, 254.
29. On Luther’s thought and the law, see Makinen 2006.

30. Luther 1989, 597.
31. Luther 1989, 613.
32. Luther 1989, 663.
33. Luther 1989, 665.
34. Luther 1989, 679.
35. Hobbes 2008, 313. On Hobbes and the circulation of his thought, see Parkin 2007.
36. Hobbes 2008, 323.
37. Hobbes 2008, 343.
38. Spinoza 2007, 116.
39. Spinoza 2007, 6.
40. Spinoza 2007, 11.
41. Spinoza 2007, 238.
42. Spinoza 2007, 207.
43. Spinoza 2007, 206.
44. Hobbes 2008, 251.
45. Strauss 1952; Agamben 1998.
46. Hobbes 2008, 362.
47. Hobbes 2008, 268–69.
48. Hobbes 2008, 267.
49. Hobbes 2008, 322.
50. Hobbes 2008, 378.
51. Hobbes 2008, 37.
52. Domat (1723). Domat insists upon the shining dimension of power and advises the rulers “to make the minds of all the subjects venerate it” (*en imprimer la vénération dans les esprits de tous les sujets*) (23).
53. Domat 1723, 336.
54. Domat 1723, 346.
55. Hobbes 2008, 85.
56. Hobbes 2008, 105.
57. Rousseau 1978, 101.
58. Rousseau 1978, 101.
59. Rousseau 1978, 96.
60. Rousseau 1978, 98.
61. Rousseau 1978, 101.
62. Rousseau 1978, 10.
63. On Rousseau and the concept of general will, see Farr and Williams 2015.
64. Rousseau 1978, 4.
65. Hobbes 2008, 413.
66. On Montesquieu’s thought, see Sullivan 2017.
67. Montesquieu 1868, 9.
68. Montesquieu 1868, 93.
69. Montesquieu 1868, 81.
70. Montesquieu 1868, 85.
71. Montesquieu 1868, 90.
72. Montesquieu 1868, 128.

73. Leynadier 1846, 231.
74. *East India*, House of Commons, Parliament, Great Britain.
75. On the European legal thinking of the nineteenth century and colonial legal arrangements in India, see Mantena 2010.
76. *First Report* 1864, 60.
77. Article 109 of the Constitution of November 4, 1848, states that the “the territory of Algeria is a French territory and will be ruled by specific laws” [le territoire de l’Algérie est territoire français et sera régi par des lois particulières].
78. Nores 1909, 1.
79. Macaulay 1854, 288.
80. Nores 1909, 1.
81. Nores 1909, 9.
82. Macaulay 1854, 318.
83. Macaulay 1854, 318.
84. Nores 1909, 60.
85. Nores 1909, 62.

CHAPTER 12. INNER SELF, COLLECTIVE SELF, AND THE LAW OF THE UNIVERSAL

1. Kant 1996, 23.
2. Kant 1996, 96–97.
3. “The General Law Code for the Prussian States,” proclaimed on February 5, 1794, The German Historical Institute, https://ghdi.ghi-dc.org/docpage.cfm?docpage_id=3779, last accessed September 30, 2024.
4. On Kantian moral and legal philosophy see Ripstein 2009; Wood 2007.
5. Kant 1996, 5.
6. Kant 1996, 17.
7. Kant 1996, 17.
8. Kant 1996, 17.
9. Kant 1996, 15.
10. Kant 1996, 14.
11. Kant 1996, 24.
12. Kant 1996, 31.
13. Kant 1996, 41.
14. Kant 1996, 31.
15. Kant 1996, 45.
16. Rawls 1971.
17. Kant 1934, 86.
18. In *Religion within the Limits of Reason Alone*, Kant recalls that man does not need God to do his duties but only the (internal) law to which he “binds himself through his reason” (1934, 3). Morality is grounded in free choice and does not require an end. The duty is performed as duty and not because it is tied to a distinct end: “For its own sake morality does not need religion at all; by virtue of pure practical reason it is self-sufficient” (3). Kant leaves room for religion in his ethical philosophy, but mainly as a historical demonstration

of the harmony of revelation with practical reason. If reason in its ability to determine “the formal condition of the use of freedom” is autonomous from religion, it nevertheless requires religion when dealing with the consequences of man’s actions in the world. The question “What is to result from this right conduct of ours?” leads man to look for an end giving orientation to his actions. This higher and final end unites all the ends and duties of man, and brings harmony. The idea “of a highest good in the world” is predicated upon the existence of “a higher, moral, most holy, and omnipotent Being” (5). Moral laws do not contain in themselves the idea of highest good (they just ask men to do their duty without being concerned with the outcome), but the latter adds to them the knowledge of the outcome of man’s actions. It unifies freedom and nature in practical reality, or more precisely their respective “purposiveness.” Hence, if morality is not based on religion, religion necessarily arises out of morality: “Morality leads ineluctably to religion, through which it extends itself to the idea of a powerful Lawgiver, outside of mankind, for Whose will that is the final end (of creation) which at the same time can and ought to be man’s final end” (6).

19. Kant 1934, 86–87.
20. Hegel 1991, 242–43.
21. Hegel 1991, 247.
22. Portalis 2004, 24.
23. Portalis 2004, 19.
24. Hegel 1991, 37–39.
25. Hegel 1991, 47.
26. Hegel 1991, 42.
27. Hegel 1991, 35.
28. Hegel 1991, 51–55.
29. Hegel 1991, 73.
30. Hegel 1991, 77.
31. Hegel 1991, 132.
32. Hegel 1991, 121.
33. Hegel 1991, 164.
34. Hegel 1991, 166–67.
35. Hegel 1991, 162.
36. Hegel 1991, 159.
37. Hegel 1991, 155.

CHAPTER 13. MODERNIST REASON AND SHARI‘A

1. Interview of Murad Wahba with MEMRI TV broadcast on November 15, 2013, <https://www.memri.org/tv/egyptian-philosopher-murad-wahba-there-has-been-no-real-revolution-egypt-mentality-has-not/transcript>.
2. Cromer 1916, 1:5.
3. Cromer 1916, 1:135.
4. Weber 1958.
5. Weber, 1978, 456.
6. On Weber and law, see Treiber 2020.
7. Weber 1978, 653.

8. Weber 1978, 654.
9. Weber 1978, 656.
10. Weber 1978, 656.
11. Weber 1978, 657.
12. Weber 1978, 796.
13. Weber 1978, 819.
14. Weber 1978, 819.
15. Weber 1978, 822.
16. Weber 1978, 821. One should note a strong contradiction in Weber's writings: how can the religious law be rigid and at the same time allowing a diversity of legal opinions? Weber gives no clue to the reader to resolve this contradiction.
17. Weber 1978, 998.
18. Weber 1978, 822.
19. Antun 1988. On Antun and the broader intellectual context of secularism, Hourani 1983.
20. Antun 1988, 41–42.
21. Antun 1988, 50.
22. Antun 1988, 157.
23. Antun 1988, 210–11.
24. See Lia 1998.
25. Banna 1999, 157.
26. Banna 1999, 99–100.
27. The association of the Young Muslims, association of *Makārim al-Akhlāq* and later the Muslim Brotherhood.
28. On the drafting of the Egyptian Civil Code of 1949, see Bechor 2007.
29. Sanhuri 2000, 1:44.
30. Sanhuri 2000, 1:1.
31. Sanhuri 2000, 1:48.
32. Laroui 1967, vii–xii.
33. Laroui 1967, 85.
34. Laroui 1967, 109.
35. Jabiri 1986, 572.
36. Jabiri 1986, 511.
37. Jabiri 1986, 572.
38. Jabiri 2009, 3:174–76.

CHAPTER 14. LAW AND THE SHAPING OF THE SELF IN CONTEMPORARY EUROPE

1. Dirks 2001.
2. Mamdani 1996.
3. Mehta 1999.
4. Marx 1994.
5. Arendt 1951.
6. Rawls 1997, 766 and 776.

7. Rawls 1997, 775.
8. Rawls 1997, 768.
9. Rawls 1997, 780–82.
10. Habermas 2005, 10.
11. Habermas 2005, 8.
12. On the veil controversy, see Scott 2007.
13. On secularism, education, and Muslims in France see Bowen 2007 and Fernando 2014.
14. Durkheim 1934, 11.
15. Durkheim 1965, 612.
16. Durkheim 1965, 208.
17. Durkheim 1934, 9.
18. Durkheim 1965, 622.
19. Durkheim 1986, 40.
20. Durkheim 1965, 618.
21. Durkheim 1964, 398.
22. Durkheim 1964, 106.
23. Durkheim 1964, 107.
24. Durkheim 1964, 227.
25. Durkheim 1964, 53.
26. Durkheim 1964, 69.
27. Durkheim 1964, 409.
28. Durkheim 1964, 52.
29. Durkheim 1964, 396.
30. Parliamentary Assembly of the Council of Europe 2019.
31. European Court of Human Rights 2001.
32. Council of Europe 2021.
33. European Court of Human Rights 2010.
34. Habermas 2011, 19.
35. Habermas 1996, 31.
36. Habermas 1996, 27.
37. Habermas 1996, 26.
38. Habermas 1996, 32.
39. Habermas 1996, 36.
40. Habermas 1996, 36.
41. Habermas 1996, 83.
42. Habermas 1996, 107.
43. Habermas 1996, 107.
44. Habermas 1996, 114.
45. Habermas 1996, 109.
46. Habermas 1996, 121.
47. Habermas 1996, 117.
48. Habermas 2005, 5.
49. Habermas 2005, 6.
50. See Rawls 1997.

51. Rawls 1997, 784.
52. Habermas 2005, 8.
53. Habermas 2005, 10.
54. Habermas 2005, 10.
55. Rawls does not consider the acceptance of living in a state of toleration as the result of a “modus vivendi,” as was the case for Catholics and Protestants in the sixteenth and seventeenth centuries, a “right reason,” because this decision is only to preserve stability and peace rather than a commitment to liberal political ideals.
56. Rawls 1997, 803.
57. Descola 2013.
58. Na'im 2008, 1.
59. Na'im 1990, 1–11.

CHAPTER 15. ISLAMIC REASON

1. Hegel 1948, 68.
2. Rousseau 1978; Kant 1996.
3. Habermas 1996; Rawls 1971.
4. Farabi 1968. For a general overview of al-Farabi's thought, see Mahdi 2001.
5. On Ibn Sina's philosophy, see Wisnovsky 2003.
6. Ibn Sina 1953–1980.
7. The section devoted to the acts of worship (‘*ibādāt*’) includes more references to Islam, as Ibn Sina mentions the ritual blessing that Muslims utter when referring to the Prophet Muhammad (ṣallā Allāh ‘alayhi wa sallam) (1953–1980, 1:443).
8. Ibn Sina 1953–1980, 1:441.
9. Ibn Sina 1953–1980, 1:443.
10. Ibn Sina 1953–1980, 1:445.
11. Razi 2015, 1:97–98. On al-Razi's thought, see Shihadeh 2006.
12. Ash'ari 1979, 10.
13. More specifically, Ibn Qudama aims to refute the claims of a fellow Hanbalite scholar, Ibn ‘Aqil. While the latter publicly disavowed his *kalām* views, Ibn Qudama undertook his project in order to discourage other scholars from engaging in *kalām*.
14. Ibn Qudama 1966, 25.
15. Moreover, evidence based on revealed speech cannot be accepted as valid evidence for issues that belong to the realm of reason (*inna al-adilla al-naqliyya lā yajūzu al-tamāsuk bihā fī al-masā'il al-'aqliyya*).
16. Razi 2015, 1:143–46.
17. For a study of Ibn Taymiyya's *Dar' Ta'arūḍ al-'Aql wa al-Naql*, see Sharif El-Tobgui 2020.
18. Ibn Taymiyya 1983, 1:19.
19. Ibn Taymiyya 1983, 1:89.
20. Ibn Taymiyya 1983, 1:89–90.
21. Ibn Taymiyya 1983, 1:12.
22. Ibn Taymiyya 1983, 1:10.
23. Ibn Qudama 1966, 32.

24. On Ibn Rushd's philosophy see Adamson and Di Giovanni 2019.
25. Ibn Rushd 1994, 22.
26. Ibn Rushd 1994, 22.
27. Ibn Rushd 1994, 28.
28. Ibn Rushd 1994, 32.
29. Shirazi 1988, 162.
30. Shirazi 1988, 162.
31. Ghazali 1997, 12.
32. Ghazali 1997, 32–33.
33. Ghazali 1997, 20.
34. Ghazali 1997, 36–38.
35. Ghazali 1997, 37.
36. Ghazali 1997, 45–47.
37. El-Rouayheb 2010.
38. Damanhuri 2001, 36.
39. Ghazali 1997, 21.
40. Ghazali 1997, 28–29.
41. On Muhammad Abduh and Islamic “reform,” see Haj 2008.
42. Abduh 1972–1974, 4:7.
43. Abduh 1972–1974, 3:374–75.
44. Abduh 1972–1974, 4:9.
45. Abduh 1972–1974, 4:9.
46. For Taha Abderrahmane, the broader “Islamic revival” or “awakening” that Muslim societies have been witnessing the last decades lacks intellectual depth and grounding (*khu-luw min al-sanad al-fikrī*). Abderrahmane's thought is also an attempt to provide this revival with a philosophical foundation.
47. Abderrahmane 2010, 2.
48. Abderrahmane 1989, 79.
49. Abderrahmane 1989, 119.
50. Abderrahmane 1989, 147.
51. Abderrahmane 1989, 140.
52. Abderrahmane 1989, 149.
53. Abderrahmane 1989, 148.
54. Abderrahmane 1989, 188–89.
55. Abderrahmane 1989, 201.
56. Abderrahmane 1989, 192.
57. Abderrahmane 1989, 214.
58. Abderrahmane 2000, 97.
59. Abderrahmane 2000, 153.
60. Abderrahmane 2000, 153.

BIBLIOGRAPHY

- ‘Abd al-Jabbar, Ibn Ahmad. 1950–1969. *Al-Mughnī fī Abwāb al-Tawhīd wa al-‘Adl*. Cairo: Wizārat al-Thaqāfa.
- Abderrahmane, Taha. 1989. *Al-‘Amal al-Dīnī wa Tajdīd al-‘Aql*. Rabat: Sharikat Bābil.
- . 2000. *Fī Su‘āl al-Akhlāq*. Casablanca: al-Markaz al-Thaqāfi al-‘Arabī.
- . 2010. *Su‘āl al-Lughā wa al-Manṭiq*. Abu Dhabi: Mu’assasat Ṭiba.
- Abduh, Muhammad. 1972–1974. *Al-A‘māl al-Kāmila*. Beirut: al-Mu’assasa al-‘Arabiyya lil-Dirāsāt.
- Abu Hanifa al-Nu‘man. 1905. *Al-Fiqh al-Akbar*. Cairo: Maṭba‘at al-Taqaddum.
- Adamson, Peter, and Matteo Di Giovanni, eds. 2019. *Interpreting Averroes: Critical Essays*. Cambridge: Cambridge University Press.
- Adorno, Theodor. 1978. *Minima Moralia: Reflections from Damaged Life*. New York: Verso.
- Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*. Stanford: Stanford University Press.
- Agrama, Ali Hussein. 2012. *Questioning Secularism*. Chicago: University of Chicago Press.
- Ahmed, Shahab. 2015. *What is Islam?* Princeton: Princeton University Press.
- ‘Amer, Sa’d. 2012. *Al-Fatwā bayna al-Aṣāla wa al-Mu‘āṣara*. Cairo: Al-Azhar.
- Amir-Moezzi, Mohammed Ali. 1994. *The Divine Guide in Early Shi‘ism*. Albany: State University of New York Press.
- Anderson, Benedict. 1983. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso.
- Anjum, Ovamir. 2012. *Politics, Law and Community in Islamic Thought*. New York: Cambridge University Press.
- Antun, Farah. 1988. *Ibn Rushd wa Faslafatuhu*. Beirut: Dār al-Farābī.
- Arendt, Hannah. 1951. *The Origins of Totalitarianism*. New York: Harcourt.
- . 1963. *On Revolution*. New York: Viking Press.

- Arjomand, Said Amir. 1988. *Authority and Political Culture in Shi'ism*. Albany: State University of New York Press.
- Asad, Talal. 1986. *The Idea of an Anthropology of Islam*. Washington, DC: Center for Contemporary Arab Studies, Georgetown University.
- . 1993. *Genealogies of Religion*. Baltimore: The John Hopkins University Press.
- . 2015. "Thinking About Tradition, Religion and Politics in Egypt Today." *Critical Inquiry* 42, no. 1: 166–214.
- al-Ash'ari, Abu al-Hasan. 1979. *Risālat Istiḥsān al-Khawḍ fī 'Ilm al-Kalām*. Haydarabad: Majlis Dā'irat al-Ma'ārif al-'Uthmāniyya.
- 'Ashira al-Muḥammadiyya. 1993. *Al-Ta'rīf bi-l-Ṭarīqa*. Cairo: Maṭba'at wa Rasā'il al-'Ashira al-Muḥammadiyya.
- . 1995. *Khaṭawāt 'alā Ṭarīq al-Iṣlāḥ*. Cairo: Maṭba'at wa Rasā'il al-'Ashira al-Muḥammadiyya.
- Augustine of Hippo. 2010. *On the Free Choice of the Will, On Grace and Free Choice, and Other Writings*. Cambridge: Cambridge University Press.
- . 2001. *Political Writings*. Cambridge: Cambridge University Press.
- . 1876. *The Confessions*. Edinburgh: T. & T. Clark.
- Austin, John Lawngshaw. 1975. *How to Do Things With Words*. Cambridge: Harvard University Press.
- Azmeh, Aziz. 1982. *Ibn Khaldun: An Essay in Reinterpretation*. London: Cass.
- al-Banna, Hasan. 1999. *Fiqh al-Wāqī'*. Al-Manṣūra: Dār al-Kalima.
- Bechor, Guy. 2007. *The Sanhuri Code*. Leiden: Brill.
- Belal, Youssef. 2006. "Mystique et politique chez Abdessalam Yassine et ses adeptes." *Archives des Sciences Sociales des Religions* 135.
- . 2011. *Le Cheikh et le Calife. Sociologie Religieuse de l'Islam Politique*. Paris: Éditions de l'École Normale Supérieure.
- . 2018. "Islamic Law, Truth, Ethics: Fatwa and Jurisprudence of the Revolution." *Comparative Studies of South Asia, Africa and the Middle East* 38.
- Berman, Harold. 1983. *Law and Revolution*. Cambridge: Harvard University Press.
- Bhabha, Homi. 1990. *Nation and Narration*. New York: Routledge.
- Bousquet, George. 1949. *Les Grandes Pratiques Rituelles de l'Islam*. Paris: Presses Universitaires de France.
- Bowen, John. 2007. *Why the French Don't Like Headscarves*. Princeton: Princeton University Press.
- Brague, Remi. 2005. *La Loi de Dieu*. Paris: Gallimard.
- Brundage, James. 1995. *Medieval Canon Law*. New York: Longman.
- Brockopp, Jonathan. 2017. *Muhammad's Heirs: The Rise of Muslim Scholarly Communities, 622–950*. New York: Cambridge University Press.
- al-Busnawi, al-Aqahsani. 2010. *Samt al-Wusūl fī 'Ilm al-Uṣūl*. Al-Dammam: Dār Ibn al-Jawzī.
- Butler, Judith. 2015. *Notes Toward a Performative Theory of Assembly*. Cambridge: Harvard University Press.
- Chakrabarty, Dipesh. 2000. *Provincializing Europe*. Princeton: Princeton University Press.

- Clifford, James, ed. 1986. *Writing Culture: The Poetics and Politics of Ethnography*. Berkeley: University of California Press.
- Cromer, Evelyn Baring. 1916. *Modern Egypt*. London: Macmillan.
- Cheddadi, Abdesselam. 2006. *Ibn Khaldun: l'homme et le théoricien de la civilisation*. Paris: Gallimard.
- Constable, Olivia. 1997. *Medieval Iberia*. Philadelphia: University of Pennsylvania Press.
- Council of Europe. 2021. *European Convention on Human Rights*. https://www.echr.coe.int/documents/d/echr/Convention_ENG.
- Damanhuri, 'Abd al-Mun'im. 2001. *Idāḥ al-Mubham min Ma'ānī al-Sullam*. Damascus: Dār al-Farfūr.
- Davenport, Frances, ed. 1917. *European Treaties Bearing on the History of the United States and its Dependencies to 1648*. Washington: Carnegie Institution of Washington.
- Davies, Brian. 1992. *The Thought of Thomas Aquinas*. Oxford: Clarendon Press.
- Dhanani, Alnoor. 1994. *The Physical Theory of Kalam: Atoms, Space and Void in Basrian Mu'tazili Cosmology*. Leiden: Brill.
- Derrida, Jacques. 1992. *Acts of Literature*. London: Routledge.
- Descola, Phillipe. 2013. *Beyond Nature and Culture*. Chicago: University of Chicago Press.
- Dirks, Nicholas. 2001. *Castes of Mind*. Princeton: Princeton University Press.
- Domat, Jean. 1723. *Les Lois Civiles Dans leur Ordre Naturel*. Paris: Ch. Robustel.
- Driscoll, Michael. 1998. "Ad Pueros Sancti Martini." *Traditio* 53: 37–61.
- Durkheim, Emile. 1934. *L'éducation morale*. Paris: Felix Alcan.
- . 1964. *The Division of Labor in Society*. New York: Free Press.
- . 1965. *The Elementary Forms of the Religious Life*. New York: Free Press.
- . 1986. *Durkheim on Politics and the State*. Stanford: Stanford University Press.
- Dutton, Yasin. 1999. *The Origins of Islamic Law*. Surrey: Curzon.
- Elden, Stuart. 2013. *The Birth of Territory*. Chicago: The University of Chicago Press.
- El-Rouayheb, Khaled. 2010. *Relational Syllogisms and the History of Arab Logic, 900–1900*. Leiden: Brill.
- El Shamsy, Ahmed. 2013. *The Canonization of Islamic Law*. New York: Cambridge University Press.
- Emon, Anver M., and Rume Ahmed, eds. 2018. *The Oxford Handbook of Islamic Law*. Oxford: Oxford University Press.
- European Court of Human Rights. 2001. *Refah Partisi (The Welfare Party) and Others v. Turkey*. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-59617%22%5D%7D>, last accessed October 2024.
- . 2010. *Sinan Işık v Turkey*. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-97087%22%5D%7D>, last accessed October 2024.
- al-Farabi, Abu Nasr. 1968. *Kitāb al-Milla*. Beirut: Dār al-Mashriq.
- Farr, James, and David Williams, eds. 2015. *The General Will: The Evolution of a Concept*. Cambridge: Cambridge University Press.
- Fernando, Mayanthi. 2014. *The Republic Unsettled*. Durham: Duke University Press.
- First Report of Her Majesty's Commissioners Appointed to Prepare a Body of Substantive Law for India*. 1864. London.

- Fitzpatrick, Peter. 2001. *Modernism and the Grounds of Law*. Cambridge: Cambridge University Press.
- Foucault, Michel. 1972. *The Order of Things*. New York: Pantheon Books.
- . 1986. *The Care of the Self: Volume 3 of the History of Sexuality*. New York: Pantheon Books.
- . 1997. *Ethics. Subjectivity and Truth*. New York: The New Press.
- . 2005. *The Hermeneutics of the Subject*. New York: Palgrave-Macmillan.
- Frank, Richard. 1992. "The Science of Kalam." *Arabic Sciences and Philosophy* 2:1.
- . 1994. *Al-Ghazali and the Ash'arite School*. Durham: Duke University Press.
- Freud, Sigmund. 1950. *Totem and Taboo*. New York: W. W. Norton.
- Frey, Abigail. 2009. *A Contrite Heart: Prosecution and Redemption in the Carolingian Empire*. Leiden: Brill.
- Geertz, Clifford. 1971. *Islam Observed*. Chicago: The University of Chicago Press.
- Gellner, Ernst. 1981. *Muslim Society*. Cambridge: Cambridge University Press.
- al-Ghazali, Abu Hamid. 1916. *Ihyā' 'Ulūm al-Dīn*. Cairo: Dār al-Kutub al-'Arabiyya al-Kubrā.
- . 1997. *Al-Mustaṣfā min 'Ilm al-Uṣūl*. Beirut: Mu'assasat al-Risāla.
- . 2003. *Al-Iqtīṣād fī al-I'tiqād*. Damascus: Dar Qutayba.
- Gibson, Charles. 1968. *The Spanish Tradition in America*. Columbia: University of South Carolina Press.
- Gilsenan, Michael. 1973. *Saint and Sufi in Modern Egypt: An Essay in the Sociology of Religion*. Oxford: Clarendon Press.
- Gilson, Etienne. 1960. *The Christian Philosophy of Saint Augustine*. New York: Random House.
- Goering, Joseph. 2004. "The Internal Forum and the Literature of Penance and Confession." *Traditio* 59: 175–227.
- Graf, Bettina, and Jakob Skovgaard-Petersen, eds. 2009. *Global Mufti: The Phenomenon of Yusuf Al-Qaradawi*. New York: Columbia University Press.
- Gratian. 1993. *The Treatise on Laws*. Washington, DC: Catholic University of America Press.
- Griffel, Frank. 2009. *Al-Ghazali's Philosophical Theology*. Oxford: Oxford University Press.
- Gregory I. 1950. *Book of Pastoral Care*. Westminster: The Newman Press.
- Gutas, Dimitri. 2005. "The Logic of Theology (Kalam) in Avicenna." In *Logik und Theologie*, edited by Dominik Perler and Ulrich Rudolph, 58–72. Leiden: Brill.
- Habermas, Jurgen. 1996. *Between Facts and Norms*. Cambridge: MIT Press.
- . 2001. "Why Europe Needs a Constitution." *New Left Review* 11.
- . 2005. "Religion in the Public Sphere." Lecture Presented at the Holberg Prize Seminar.
- Haj, Samira. 2008. *Reconfiguring Islamic Tradition: Reform, Rationality and Modernity*. Stanford: Stanford University Press.
- Hallaq, Wael. 1997. *A History of Islamic Legal Theories*. Cambridge: Cambridge University Press.
- . 2009. *Shari'a: Theory, Practice, Transformation*. Cambridge: Cambridge University Press.
- . 2013. *The Impossible State: Islam, Politics and Modernity's Moral Predicament*. New York: Columbia University Press.
- Hamilton, Sarah. 2001. *The Practice of Penance, 900–1050*. Rochester: Boydell Press.

- Hanafi, Hasan. 1988. *Min al-‘Aqida ilā al-Thawra*. Cairo: Maktabat Madbuli.
- Hasnawi, Ahmed, and Wilfrid Hodges. 2016. “Arabic Logic up to Avicenna.” In *The Cambridge Companion to Medieval Logic*, edited by Catarina Dulith Novaes and Stephen Read. Cambridge: Cambridge University Press.
- Hegel, Georg Wilhelm Friedrich. 1948. *Early Theological Writings*. Chicago: Chicago University Press.
- . 1991. *Elements of the Philosophy of Right*. Cambridge: Cambridge University Press.
- Heidegger, Martin. 1977a. *The Question Concerning Technology and Other Essays*. New York: Garland Publishing.
- . 1977b. *Basic Writings*. New York: Harper & Row.
- . 1975. *Poetry, Language, Thought*. New York: Harper & Row.
- Helps, Arthur. 1900. *The Spanish Conquest in America*. London: John Lane.
- Henderson, John. 2007. *The Medieval World of Isidore of Seville*. Cambridge: Cambridge University Press.
- Hirschkind, Charles. 2006. *The Ethical Soundscape*. New York: Columbia University Press.
- Hobbes, Thomas. 2008. *Leviathan*. Oxford: Oxford University Press.
- Horkheimer, Max. 1978. *Dawn and Decline*. New York: The Seabury Press.
- Horkheimer, Max, and Theodor W. Adorno. 2002. *Dialectic of Enlightenment: Philosophical Fragments*. Stanford: Stanford University Press.
- Hourani, Albert. 1983. *Arabic Thought in the Liberal Age, 1798–1939*. Cambridge: Cambridge University Press.
- Hurgronje, Snouck. 1957. *Selected Works*. Leiden: Brill.
- Ibn ‘Abidin, Muhammad Amin Ibn ‘Umar. 2000. *Hāshiyat Ibn ‘Abidin: Radd al-Muhtār ‘alā al-Durr al-Mukhtār*. Damascus: Dar al-Thaqāfa wa al-Turāth.
- Ibn Khaldun, ‘Abd al-Rahman. 1996. *Shifā’ al-Sā’il wa Tahdhib al-Masā’il*. Damascus: Dār al-Fikr.
- . 2005. *Al-Muqaddima*. Casablanca: Bayt al-Funūn wa-al-‘Ulūm wa-al-Adāb.
- Ibn Qayyim al-Jawziyya, Muhammad Ibn Abi Bakr. 1968. *I’lām al-Muwaqqi’ in ‘an Rabb al-‘Ālamīn*. Cairo: Maktabat al-Kulliyāt al-Azhariyya.
- . 2013. *Kitāb al-Ṣalāt*. Jeddah: Majma‘ al-Fiqh al-Islāmī.
- Ibn Qudama, Muwaffaq al-Din. 1966. *Tahrim al-Nazar fi Kutub Ahl al-Kalām*. London: Luzac.
- Ibn Rushd. 1994. *Faṣl al-Maqāl wa Taqrīr mā bayna al-Sharī‘a wa al-Ḥikma min al-Ittisāl*. Beirut: Dār al-Fikr al-Lubnānī.
- . 1998. *Al-Kashf ‘an Manāhij al-Adilla fi ‘Aqā’id al-Milla*. Beirut: Markaz Dirāsāt al-Wahda al-‘Arabiyya.
- Ibn Sina, Abu ‘Ali al-Husayn. 1953–1980. *Al-Shifā’*. Cairo: Wizārat al-Thaqāfa wa al-Irshād al-Qawmī.
- Ibn Taymiyya, Taqī Din Ahmad. 1951. *Al-Qawā’id al-Nūrāniyya al-Fiqhiyya*. Cairo: Maṭba‘at al-Sunna al-Muḥammadiyya.
- . 1983. *Dar’ Ta’aruḍ al-‘Aql wa al-Naql*. Riyadh: Jāmi‘at al-Imām Muhammad Ibn Sa‘ūd al-Islāmiyya.
- . 2008. *Al-Siyāsa al-Shar‘iyya fi Iṣlāḥ al-Rā’i wa al-Rā’iya*. Al-Giza: Dār al-Farūq li-l-Istithmārāt al-Thaqāfiyya.
- . 2011. *Majmū‘ al-Fatāwā*. Cairo: Dār Ibn Ḥazm.

- Iqbal, Muhammad. 2013. *The Reconstruction of Religious Thought in Islam*. Stanford: Stanford University Press.
- al-Jabiri, Muhammad 'Abid. 1986. *Bunyat al-'Aql al-'Arabī*. Beirut: Markaz Dirāsāt al-Waḥda al-'Arabiyya.
- . 2009. *Fī Ghimār al-Siyāsa, Fikran wa Mumārasa*. Beirut: al-Shabaka al-'Arabiyya lil-Abḥāth wa al-Nashr.
- Johansen, Baber. 1999. *Contingency in a Sacred Law*. Leiden: Brill.
- al-Juwayni, Imam al-Haramayn. 1979. *Ghiyāth al-Umam fī Iltiyāth al-Ẓulam*. Cairo: Maktabat Imām al-Haramayn.
- Kamali, Mohammed Hashim. 1991. *Principles of Islamic Jurisprudence*. Cambridge: Islamic Texts Society.
- Kant, Immanuel. 1934. *Religion Within the Limits of Reason Alone*. Chicago: The Open Court.
- . 1996. *The Metaphysics of Morals*. Cambridge: Cambridge University Press.
- Kantorowicz, Ernst. 1957. *The King's Two Bodies*. Princeton: Princeton University Press.
- al-Karaki, Muhaqqiq. 1989. *Risālat Ṣalāt al-Jumu'a in Rasā'il al-Muḥaqqiq al-Karākī*. Qom: Maktabat al-Najafī.
- Katz, Marion. 2013. *Prayer in Islamic Thought and Practice*. Cambridge: Cambridge University Press.
- Kelsen, Hans. 1967. *Pure Theory of Law*. Berkeley: University of California Press.
- al-Kindī, Abu Yusuf Ya'qub. 1948. *Kitāb al-Kindī ilā al-Mu'taṣim bi-Allah fī al-Falsafa al-Ūlā*. Cairo: Dār Ajyā' al-Kutub al-'Arabiyya.
- Koselleck, Reinhart. 2004. *Futures Past: On the Semantics of Historical Time*. New York: Columbia University Press.
- al-Kulayni, Mohammad Ibn Ya'qub. 2007. *Uṣūl al-Kāfī*. Beirut: Manshūrāt al-Fajr.
- Kuttner, Stephan. 1980. *The History of Ideas and Doctrines of Canon Law in the Middle Ages*. London: Varorium.
- Laroui, Abdallah. 1967. *L'Ideologie Arabe Contemporaine, Essai Critique*. Paris: Maspero.
- Lee, A. D. 2013. *From Rome to Byzantium: The Transformation of Ancient Rome*. Edinburgh: Edinburgh University Press.
- Leynadier, Camille. 1846. *Histoire de l'Algérie française*. Paris: H. Morel.
- Lia, Brynjar. 1998. *The Society of the Muslim Brothers in Egypt*. Reading: Ithaca Press.
- Lowry, Joseph. 2007. *Early Islamic Legal Theory: The Risāla of Muhammad Ibn Idrīs al-Shāfi'ī*. Leiden: Brill.
- Luther, Martin. 1989. *Martin Luther's Basic Theological Writings*. Minneapolis: Fortress.
- MacIntyre, Alasdair. 1984. *After Virtue*. Notre Dame: University of Notre Dame Press.
- Macaulay, Thomas. 1854. *Critical and Historical Essays*. London: Longman.
- Mahmood, Saba. 2005. *Politics of Piety*. Princeton: Princeton University Press.
- Makinen, Virpi, ed. 2006. *Lutheran Reformation and the Law*. Leiden: Brill.
- al-Makki, Abu Talib. 1991. *Qūt al-Qulūb fī Mu'āmalat al-Maḥbūb wa Waṣf Ṭarīq al-Murīd ilā Maqām al-Tawḥīd*. Cairo: Dār al-Rashād.
- Mahdi, Muhsin. 1957. *Ibn Khaldun's Philosophy of History: A Study in the Philosophical Foundation of the Science of Culture*. London: Allen and Unwin.
- . 2001. *Alfarabi and the Foundation of Islamic Political Philosophy*. Chicago: University of Chicago Press.
- Mamdani, Mahmood. 1996. *Citizen and Subject*. Princeton: Princeton University Press.

- Mantena, Karuna. 2010. *Alibis of Empire*. Princeton: Princeton University Press.
- March, Andrew, ed. 2011. *Shari'a*. Oxford Bibliographies. Oxford: Oxford University Press.
- Markus, Robert. 1997. *Gregory the Great and His World*. Cambridge: Cambridge University Press.
- Marsilius of Padua. 2005. *The Defender of the Peace*. Cambridge: Cambridge University Press.
- Marx, Karl. 1994. *Marx: Early Political Writings*. Cambridge: Cambridge University Press.
- Masud, Muhammad Khalid. 1995. *Shatibi's Philosophy of Islamic Law*. Islamabad.
- Masud, Muhammad Khalid, Brinkley Messick, and David S. Powers, eds. 1996. *Islamic Legal Interpretation: Muftis and their Fatwas*. Cambridge: Harvard University Press.
- Mawardi, Ali Ibn Muhammad. 1981. *Kitāb Tashīl al-Nazar wa Ta'jīl al-Dafar fī Akhlāq al-Malik wa Siyāsāt al-Mulk*. Beirut: Dār al-Nahḍa.
- Mehta, Uday. 1999. *Liberalism and Empire*. Chicago: University of Chicago Press.
- Melchert, Christopher. 1997. *The Formation of the Sunni Schools of Law*. New York: Brill.
- Messick, Brinkley. 2018. *Shari'a Scripts*. New York: Columbia University Press.
- Mikhail, Hanna. 1995. *Politics and Revelation: Mawardi and After*. Edinburgh: Edinburgh University Press.
- Milliot, Louis. 1953. *Introduction à l'Étude du Droit Musulman*. Paris: Sirey.
- Montesquieu, Charles de Secondat de. 1868. *De l'Esprit des Lois*. Paris: Garnier.
- Moore, Sally Falk. 2004. *Law and Anthropology*. Malden: Blackwell.
- Moosa, Ebrahim. 2005. *Ghazali and the Poetics of Imagination*. Chapel Hill: The University of North Carolina Press.
- Murray, Alexander. 1993. "Confession before 1215." *Transactions of the Royal Historical Society* 3: 51–81.
- An-Na'im, Abdullahi. 1990. *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*. Syracuse: Syracuse University Press.
- . 2008. *Islam and the Secular State. Negotiating the Future of Shari'a*. Cambridge: Harvard University Press.
- al-Nawawi, Muhyi al-Din Abi Zakariyya. 1971. *Al-Adkār al-Muntakhaba min Kalām Sayyid al-Abrār*. Damascus: al-Maktaba al-Umawiyya.
- Nores, Edmond. 1909. *Essai de Codification du Droit Musulman Algérien- Statut Personnel*. Alger: A. Jourdan.
- Pagden, Anthony. 1982. *The Fall of Natural Man*. Cambridge: Cambridge University Press.
- Parkin, Jon. 2007. *Taming The Leviathan*. Cambridge: Cambridge University Press.
- Parliamentary Assembly of the Council of Europe. 2019. "Sharia, the Cairo Declaration and the European Convention of Human Rights." <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25353>, last accessed 01 October 2024
- Perler, Dominik, and Rudolph Ulrich. 2005. *Logik und Theologie*. Leiden: Brill.
- Petersen, Rudolph. 1997. *Defining Islam*. Leiden: Brill.
- Portalès, Jean-Etienne-Marie. 2004. *Discours préliminaire du premier projet de Code civil*. Bordeaux: Editions Confluences.
- al-Qaradawi, Yusuf. 1974. *Al-Ḥalāl wa al-Ḥarām fī al-Islām*. Cairo: Dār al-ʿItisām.
- . 1986. *Al-Fiqh al-Islāmī bayna al-Aṣāla wa al-Tajdīd*. Cairo: Dār al-Ṣaḥwa.
- . 1988. *Al-Fatwā bayna al-Inzibāt wa al-Tasayyub*. Cairo: Dār al-Ṣaḥwa.
- . 1996. *Al-Imān wa al-Ḥayāt*. Cairo: Maktabat Wahba.

- . 1997. *Madkhal li-Dirāsāt al-Sharī‘a al-Islāmiyya*. Beirut: Mu‘assasat al-Risāla.
- . 1998. *Al-Siyāsa al-Shar‘iyya*. Cairo: Maktabat Wahba.
- . 2000a. *Fī al-Ṭarīq ilā Allah*. Beirut: Mu‘assasat al-Risāla.
- . 2000b. *Fatāwā Mu‘āṣira*. Beirut: al-Maktab al-Islāmī.
- . 2001. *Fī Fiqh al-Aqalliyyāt al-Muslima: Ḥayāt al-Muslimīn Wasaṭ al-Mujtama‘āt al-Ukhrā*. Cairo: Dār al-Shurūq.
- . 2012. 25 Yanāyir 2011, *Thawrat Sha‘b*. Cairo: Maktabat Wahba.
- . 2013. *Al-Ijtihād fī al-Sharī‘a al-Islāmiyya*. Cairo: Dār al-Qalam lil-Nashr wa al-Tawzī‘.
- Qutb, Sayyid. 1988. *Al-Islām wa Mushkilāt al-Ḥadāra*. Cairo: Dār Iḥyā‘ al-Shurūq.
- al-Raisuni, Ahmed. 2013. *Fiqh al-Thawra*. Cairo: Dār al-Kalima.
- Rapoport, Yossef. 2005. *Marriage, Money and Divorce in Medieval Islamic Society*. Cambridge: Cambridge University Press.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge: Cambridge University Press.
- . 1997. “The Idea of Public Reason Revisited.” *The University of Chicago Law Review* 64, no 3: 765–807.
- al-Razi, Fakhr al-Din. 1977. *Ma‘ālim Uṣūl al-Dīn*. Cairo: Maktabat al-Kulliyāt al-Azhariyya.
- . 2015. *Nihāyat al-‘Uqūl fī Dirāyat al-Uṣūl*. Beirut: Dār al-Dhakhā‘ir.
- Rida, Muhammad Rashid. 1984. *Yusr al-Islām wa Uṣūl al-Tashrī‘ al-‘Āmm fī Nahy Allah wa Rasūlihi ‘an Kathrat al-Su‘āl*. Cairo: Maktabat al-Salām al-‘Alamiyya.
- Ripstein, Arthur. 2009. *Force and Freedom: Kant’s Legal and Political Philosophy*. Cambridge: Harvard University Press.
- Rist, John. 1994. *Augustine: Ancient Thought Baptized*. Cambridge: Cambridge University Press.
- Rosa, Harmut. 2013. *Social Acceleration. A New Theory of Modernity*. New York: Columbia University Press.
- Rosen, Lawrence. 2000. *The Justice of Islam*. Oxford: Oxford University Press.
- Rousseau, Jean-Jacques. 1978. *On the Social Contract*. New York: St. Martin’s Press.
- Said, Edward. 1978. *Orientalism*. New York: Vintage.
- John of Salisbury. 1990. *Policraticus*. Cambridge: Cambridge University Press.
- Sanhuri, ‘Abd al-Razzaq. 2000. *Al-Wasīṭ fī Sharḥ al-Qānūn al-Madani al-Jadīd*. Beirut: Manshūrat al-Ḥalabī al-Ḥuqūqiyya.
- Shapin, Steven, and Simon Schaffer. 1985. *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental Life*. Princeton: Princeton University Press.
- Sharif El-Tobgui, Carl. 2020. *Ibn Taymiyya on Reason and Revelation*. Leiden: Brill.
- Schacht, Joseph. 1964. *An Introduction to Islamic Law*. Oxford: Clarendon Press.
- Schmidtke, Sabine, ed. 2016. *The Oxford Handbook of Islamic Theology*. Oxford: Oxford University Press.
- Schmitt, Carl. 2010. *Political Theology*. Chicago: University of Chicago Press.
- Scott, Joan. 2007. *The Politics of the Veil*. Princeton: Princeton University Press.
- al-Shafi‘i, Hasan. 2014. *Shahādāt Azhariyy Mu‘āṣir ‘alā Masār al-Taḥawwul al-Dimuqrāṭī fī Miṣr*. Tunis: Dār al-Gharb al-Islāmī.
- al-Shafi‘i, Muhammad Ibn Idris. 1999. *Al-Risāla*. Beirut: Dār al-Nafā‘is.
- al-Shatibi, Abu Ishaq. 2005. *Al-Muwāfaqāt fī Uṣūl al-Sharī‘a*. Beirut: Dār al-Kutub al-‘Ilmiyya.

- Shihadeh, Ayman. 2006. *The Teleological Ethics of Fakhr al-Din al-Razi*. Leiden: Brill.
- al-Shirazi, Abu Ishaq Ibrahim. 1988. *Sharḥ al-Lumaʿ*. Beirut: Dār al-Gharb al-Islāmī.
- Siddiqi, Sohaira. 2019. *Law and Politics Under the Abbasids: An Intellectual Portrait of al-Juwaini*. Cambridge: Cambridge University Press.
- Spinoza, Baruch. 2007. *Theological-Political Treatise*. Cambridge: Cambridge University Press.
- Southern, Richard. 1970. *Western Society and the Church in the Middle Ages*. New York: Penguin Books.
- Strauss, Leo. 1952. *The Political Philosophy of Hobbes: Its Basis and Its Genesis*. Chicago: University of Chicago Press.
- Suarez, Francisco. 2015. *Selection From Three Works*. Indianapolis: Liberty Fund.
- Sullivan, Vickie. 2017. *Montesquieu and the Despotism of Europe: An Interpretation of The Spirit of the Laws*. Chicago: The University of Chicago Press.
- Taylor, Charles. 1989. *Sources of the Self: The Making of the Modern Identity*. Harvard: Harvard University Press.
- Thomas Aquinas. 1993. *The Treatise on Law. Summa Theologiae, I-II*. Notre Dame: University of Notre Dame Press.
- Treiber, Hubert. 2020. *Reading Max Weber's Sociology of Law*. Oxford: Oxford University Press.
- Van Ess, Josef. 2017–2020. *Theology and Society in the Second and Third Centuries of the Hijra*. Leiden: Brill.
- Vattel, Emer de. 1993. *The Law of Nations*. New York: Legal Classics Library.
- Vitoria, Francisco de. 1991. *Political Writings*. Cambridge: Cambridge University Press.
- Weber, Max. 1946. *From Max Weber: Essays in Sociology*. New York: Oxford University Press.
- . 1958. *The Protestant Ethic and the Spirit of Capitalism*. New York: Scribner.
- . 1978. *Economy and Society*. Berkeley: University of California Press.
- Weiss, Bernard. 1998. *The Spirit of Islamic Law*. Athens: University of Georgia Press.
- Winichakul, Thongchai. 1997. *Siam Mapped: A History of a Geo-Body of a Nation*. Honolulu: University of Hawaii Press.
- Winter, Tim. 2008. *The Cambridge Companion to Classical Islamic Theology*. Cambridge: Cambridge University Press.
- Wisnovsky, Robert. 2003. *Avicenna's Metaphysics in Context*. Ithaca: Cornell University Press.
- Wolfson, Harry Austryn. 1976. *The Philosophy of the Kalam*. Cambridge: Harvard University Press.
- Wood, Allan. 2007. *Kantian Ethics*. Cambridge: Cambridge University Press.
- Yazaki, Saeko. 2013. *Islamic Mysticism and Abu Talib al-Makki*. London: Routledge.
- Zaki Ibrahim, Muhammad. 1989. *Uṣūl al-Wusūl, Adillat Ahamm Maʿālim al-Ṣuḥfiyya al-Haqqā, min Ṣariḥ al-Kitāb wa Ṣaḥīḥ al-Sunna*. Cairo: Maṭbaʿat wa Rasāʾil al-ʿAshīra al-Muḥammadiyya.
- Zaman, Mohammed Qasim. 1997. *Religion and Politics Under the Early 'Abbasids*. Leiden: Brill.
- . 2012. *Modern Islamic Thought in a Radical Age: Religious Authority and Internal Criticism*. Cambridge: Cambridge University Press.
- Zarruq, Ahmad Ibn Ahmad. 1976. *Qawāʿid al-Taṣawwuf*. Cairo: Maktabat al-Kulliyāt al-Azhariyya.
- al-Zwaini, Laila, and Ruud Peters. 1994. *A Bibliography of Islamic Law, 1980-1993*. Leiden: Brill.

INDEX

- 'Abd al-Jabiri, Muhammad, 165, 265, 267–270
 Abderrahmane, Taha, 308–11, 341n46
 Abderrazik, Ali, 58–59
 Abduh, Muhammad, 17, 77, 128, 131, 138–39,
 261–62, 265–66; and critique of jurispru-
 dence, 134–36; and *kalām*, 165, 306–308
 abstraction: of law, 6, 188, 224, 258–59; in liberal
 tradition, 265
 Abu Hanifa, 35, 125, 137–8
 Abu Talib al-Makki, 81–83, 93
 agency, 246–47, 276; collective, 198; ethical, 127;
 human, 156–57, 161, 165; of the unseen, 154
 Ahmed, Shahab, 78–81
 Algeria: French colonization of, 233, 235–37,
 336n77
 analogical reasoning (*qiyās*), 22, 85, 141, 154, 161,
 180, 184–185, 301–302; as source of law, 136,
 173, 293, 298. See also *qiyās*
 angels, 47–48, 65, 70, 82, 177, 301, 318n5
 anthropology: historical, 9; of the invisible, 65; of
 Islam, 20–21, 25–26, 93, 95, 117, 147–50, 313; of
 law, 14, 18, 112
 Antun, Farah, 260–62, 307
 Aquinas, Thomas, 43, 106, 202, 210, 213–14,
 224–25
 Aristotle, 214, 224–25, 261, 307
 Asad, Talal, 11, 95–96, 143–44, 147–50
 al-Ash'ari, Abu Hasan, 298–99
 al-ʿAshīra al-Muḥammadiyya, 66, 73, 77
 atomism, 164, 168, 329n11, 330n42
 Augustine, 21, 195, 199–203, 214, 217–18
 authenticity: *aṣāla*, 139, 166, 266–67; of hadith,
 31, 36, 70, 77, 176, 187, 294, 304
 autonomy, 22, 43, 105, 239, 273–74, 280, 285, 287,
 291; critique of, 277–78
 al-Azhar, 14, 18, 66, 76, 114, 131, 173, 175–76, 305
 al-Ash'ariyya, 154–55, 163–64, 330n38
 al-Banna, Hasan, 77, 262
bāṭin. See esoteric; interiority; inwardness;
 states
 belief (*iʿtiqād*), 82, 123, 149, 153, 156, 163, 307;
 freedom of, 234–35, 275–76, 279–80; Sufi
 understanding of, 66. See also creed
 beliefs, 2–3, 13, 18, 21–22, 28, 42, 46, 48, 69, 126,
 140, 209, 221, 234, 241, 290–92, 313; Christian,
 206, 219; and deeds, 34; and European law,
 278–80; in contractualist philosophy, 225–32,
 282, 287–88; and *kalām*, 148–54, 156–60,
 170–71, 297–99, 307, 318n3; inner, 9–10, 14,
 78, 218–19, 227, 287; pagan, 208
 bodies, 10, 13, 21, 58, 105–106, 208–209, 228,
 249; in *kalām*, 149, 153, 160, 162, 164; regula-
 tion of, 8, 41–42, 99, 127, 200, 231. See also
 embodiment
 body politic, 8, 42, 99, 216, 232
 Cairo, 15, 20, 39, 66–67, 95–96. See also al-Azhar;
 Tahrir Square
 caliphate, 3, 5, 53, 55–59, 169

- canon law, 10, 21, 98, 106, 119, 199–200, 203, 205–207, 210–13, 215–16, 218, 221–22, 224, 226, 229, 231, 280
- causality, 154, 156, 161, 165, 167–68, 261, 293–94
- certainty, 18, 29, 31, 50, 68, 90, 157, 162–63, 185–90, 214, 269, 306. *See also* doubt Church, the, 10, 26, 41, 106, 118, 203–209, 218; Catholic, 219–21, 275; Hobbes's views on, 229–30, 232; Luther's views on, 226–27; relations with state, 43, 119, 212–13, 215–16, 224, 231, 281, 284; under Roman Empire, 21, 199–202
- citizenship, 133, 232–33, 237, 244, 272, 280, 290; ethics of, 284–85
- civilization: colonial concept of, 236, 250, 257; in Ibn Khaldun ('*umrān*'), 3–4, 14, 16, 57; material, 260–61. *See also* conversion
- civil law, 111, 119, 124, 201, 205, 210–11, 222–25, 227, 229–234, 264
- code (of law), 191, 202, 238–40, 244–45, 250; Egyptian, 121, 238, 256, 263–65; Justinian, 202–203, 244; Napoleonic (1804), 238, 244–45, 263; Prussian, 239–40
- coercion, 56, 63, 118, 197, 215, 220–21, 232–33, 281–82
- cohesion ('*ʿasabiyya*'), 56–57
- colonialism, 10, 12–13, 236, 257, 266
- commensurability, 197–98
- communication: between citizens, 283, 286, 288; between ontological orders, 178; with God, 87, 125
- conceptualization, 14, 28, 95, 99, 286
- confession, 206–208, 217–18, 220, 225, 228–29, 231
- conquest: of the Americas, 220, 222–23
- consensus (*ijmāʿ*), 29, 79, 84, 136, 178, 180, 185, 293, 331n3
- Constantine the Great, Emperor, 202, 206
- constitution, 6, 8, 41, 44, 112, 239; Egyptian, 172, 182, 255; European, 280; French, 336n37
- constitutionalism, 289–90
- contemporaneity, 25, 196, 315
- conversion, 26, 219, 232; civilizational, 11, 21, 200, 236; to Christianity, 10, 21, 99, 200, 219–22, 224, 234–36, 334n5
- courts, 119, 121–22, 223; ecclesiastical/papal, 207, 215; shariʿa, 256
- creed ('*aqīda*'), 21, 28, 76, 123, 267, 330n38; Christian, 206, 208; and *kalām*, 152–58, 163, 170, 297–99, 301, 307, 318n3. *See also* belief
- critique: of concept of religion, 11; of Kant, 277; of law, 6–7; of Sufism, 76; of transmitted knowledge, 131, 139, 261–62, 268
- custom, 150, 205–206, 236, 244, 274. *See also* law, customary
- daʿwa* (preaching and call), 32, 67, 96, 114–15, 126, 262–63
- deeds, 13, 34, 40, 52, 57–58, 86–88, 95–101, 296–97, 309; bodily, 2–3, 5, 10–11, 14, 42, 59, 106, 127, 151; in canon law, 207–209, 213, 217; classification of, 129–31, 176–82, 189, 306; external, 18, 36, 43, 63–64, 71–72, 93, 103, 23, 228; and knowledge, 33; of the heart, 35, 89–90, 102; Luther on, 225–27; outer, 9, 27–28, 80, 91, 125, 204, 218, 245, 315; and speech, 17, 122, 149, 153–54, 177, 331n10
- Derrida, Jacques, 6–7
- Descartes, René, 25, 94, 105, 209, 227
- disagreement, 40, 135, 137, 148, 152, 163, 186–87, 297, 305
- disembodiment, 20, 93, 95, 97, 99, 109, 150, 155
- displacement, 15–17, 42, 127, 315
- dispositions, inner, 10, 42, 52, 91, 107, 203–204, 207–208, 212, 228–30, 283; and deeds, 3, 96, 123, 213
- divine law, 201, 205, 211–12, 214–16, 223, 225. *See also* eternal law; revealed law; sacred law
- domain (territorial), 8, 42, 127
- doubt, 79, 90, 120, 158–59, 176, 183–84, 206, 296. *See also* certainty; disagreement
- dreams, 4, 70. *See also* visions
- Durkheim, Émile, 22, 251, 276–78, 286
- education, 103, 115, 129, 315; moral, 276–77, 308; state, 131, 275, 278
- effectiveness: ethics of, 199, 249–50, 327n39; of knowledge, 127; shariʿa, 5, 20, 42, 53, 55–57, 59, 134, 186; of state law, 127
- Egypt, 42, 74–75, 77, 96, 99, 128, 131, 133, 173, 180; colonialism in, 256–57, 259–60; eighteenth and nineteenth century, 135–36, 305; uprisings in, 18, 20, 30, 59
- embodiment, 20, 70, 93, 95–97, 99, 108, 148–51, 245
- episteme ('*ilm*'), 1–2, 13, 18–19, 97; Christian, 127, 212, 219, 227–29, 280; ethical, 4, 28, 314; Islamic, 4, 20, 161, 183–84, 288, 293, 303, 315; and law, 10, 17; liberal, 272; rationalist, 20
- epistemic community, 1, 150
- esoteric, the (*bāṭin*), 85–86
- eternal law, 10, 199–200, 213–14, 218, 224, 229, 231
- ethics (*akhlāq*), 1–4, 111, 113, 147, 153, 197–98, 217, 296, 309–11, 323n1; Foucault on, 25–27, 318n12; Hegel on, 246, 248–51; Kant on,

- 241–43; and law, 120, 199, 209, 219, 238–39, 283, 286, 321n12; liberal, 98; science of, 99–105, 278, 325n6; of the soul, 86; spiritual, 20, 63, 70, 73–76, 94–96, 107
- ethnography, 18, 95, 143
- Europe, 8, 65, 106, 227, 249, 278, 280, 313; and colonialism, 250, 260–61, 272; development of law in, 7–10, 41–42, 98–99, 119, 210, 219, 259; modernity and, 196; Muslims in, 128, 271, 274
- European Court of Human Rights, 279–80
- events: exceptional, 2, 13, 27, 59, 117
- evidence, 2, 4–5, 18–19, 31–32, 40, 135, 178, 190, 340n15; rational, 299–300, 307; textual, 81, 141, 176, 294, 296–97
- excommunication, 207, 209, 216, 221, 223, 230
- exegesis (*tafsir*), 33, 153, 156, 165, 173, 175
- exteriority, 28, 34, 36, 38, 84, 87–89, 243, 277
- facticity, 281–82
- faith (*imān*), 36, 38, 70, 82, 86, 91, 158, 301; of ruler, 20–28, 35; science of, 83
- al-Farabi, 3, 19, 161–63, 294–97, 307
- fatwa (legal opinion), 20, 28–34, 36–40, 43–44, 74, 80, 85–86, 114–15, 127, 132, 136–38, 144, 150, 160, 294, 308, 327n22; and the state, 57, 321n13; non-coercive nature of, 107, 118, 120, 123
- fiqh*. See jurisprudence
- forms of life, 2, 7, 65, 123, 126, 131, 142, 184, 221, 281; collective, 3, 248, 262; and forms of knowledge, 10–15, 20, 184, 314–16
- forum internum/externum*, 21, 121, 207–209, 212, 218, 220–21; modern understanding of, 106, 122, 127, 209, 231, 233, 280
- Foucault, Michel, 20, 25–27, 117, 195, 318n12, 320n46
- fragments: of shari‘a, 1, 5, 20, 42, 59, 126, 314–315
- France, 22, 43, 230, 274, 276, 278
- freedom, 22, 45, 197, 217, 226, 232, 238–40, 243, 272, 277, 281, 289, 337n18; in contemporary *kalām*, 165, 169–70; of religion, 209, 234–35, 275, 279–80, 284, 288; of the will, 246–50
- Freud, Sigmund, 6–7, 16, 319nn18,21
- genealogy, 1, 9, 11, 44, 292
- generative principles, 6, 51, 54, 151, 294, 304. See also *uṣūl al-fiqh*
- al-Ghazali, Abu Hamid, 3, 35–36, 46, 77, 96–98, 106, 177, 184, 188, 268, 294; and *kalām*, 152–61, 300, 303–306; and philosophy, 80, 160–61, 300; and Sufism, 64, 66–68, 75, 81, 83, 91
- Gom‘a, Ali, 39–40, 44, 322n48
- Gospel, the, 48, 106, 203, 205, 211, 213, 222–23, 226, 232, 242, 317n2
- grace, 73, 86, 201, 213, 216–18, 222–24, 226
- grammar, 92, 151, 268, 304–305
- Gratian, 210–12, 216, 223–24, 229
- Gregory the Great, Pope, 203, 207–208, 223
- Grotius, Hugo, 8, 106, 119
- Habermas, Jürgen, 22, 45, 239, 271, 273, 280–88, 290
- hadith, 30–31, 36–37, 79, 90, 153, 156, 190, 321nn21,22; excessive reliance on, 39, 186; people of (*ahl al-ḥadīth*), 129, 183; science of, 33, 173, 175–76, 185, 268, 296–97, 304; Shi‘i, 47; Sufi understanding of, 66, 76. See also authenticity
- Hallaq, Wael, 20, 26, 123–26, 320n33
- Hanafi school, 122, 131, 136–37
- Hanafi, Hassan, 165, 169–71, 330n57
- al-Hashwiyya, 163–64, 330n38
- heart (*qalb*), 36–38, 58, 67, 115–17, 155, 202–203, 214, 226–27, 261–62; and the body, 88–92, 96, 100, 103, 105; knowledge and, 73, 81–84, 86, 318n4; secrets of, 52, 87, 310. See also deeds
- Hegel, Georg, 198, 238–39, 244–51, 263, 291
- Heidegger, Martin, 9, 12, 16, 65–66, 320n43
- heritage (*turāth*), 264, 267
- heteronomy, 95, 105–106, 201, 242, 277–78, 287, 319n21
- historicity, 6, 9, 11–14, 198
- Hobbes, Thomas, 8, 21, 41–43, 45, 99, 106, 118–20, 209, 216, 218, 226–33, 243, 245, 250, 281
- human rights, 112, 238, 240, 244, 272, 280, 289–90
- Ibn ‘Abidin, Muhammad Amin Ibn ‘Umar, 136–37
- Ibn al-Muqaffa‘, 49–50, 329n23
- Ibn Khaldun, ‘Abd al-Rahman, 14, 53, 55–58, 65–66, 72, 91, 93, 96–98, 161, 268, 318n11, 321n18; *Muqaddima* of, 3–5, 16, 57, 70, 323n2
- Ibn Qudama, Muwaffaq al-Din, 298–301, 340n13
- Ibn Rushd, 3, 19, 96, 160–64, 166, 255, 268, 294, 301–302, 308, 330nn38,40,41,42; *Kitāb Faṣl al-Maqāl* of, 80, 160, 162, 297. See also Antun, Farah
- Ibn Sina, 3, 19, 154, 161, 294; *Kitāb al-Shifā‘* of, 160, 296–97, 307
- Ibn Taymiyya, 3, 19, 29, 33, 35–36, 50, 53, 64, 77, 80, 129–30, 297–98, 300

- ijtihād* (personal effort), 21, 29, 40, 43, 49, 54, 138–39, 154, 184–85, 294, 298–99; and analogy, 159, 173, 180; contemporary, 79, 174, 183, 186, 188, 268–69, 289. See also *uṣūl al-fiqh*; shari'a goals.
- 'illa* (*ratio legis*), 188–89, 268–69
- imagination, 2, 70
- imam, 30, 37–38, 46; Shi'i, 46–49
- imamate, 46–49
- immaterial, the, 2, 107, 211, 217, 228
- incompleteness: of shari'a, 4, 11, 59, 314. See also totality
- India, 235–36, 271, 288, 290
- individualization, 205, 208, 278, 281
- intellect (*'aql*), 92–93, 96, 149, 158, 224, 255, 298, 307; mystical, 212. See also reason
- intellection, 2, 153, 307
- intellectuals, 134, 141, 165, 174, 186, 191, 265, 267, 291–93, 306
- intent (*niyya*), 45, 51, 82–83, 87, 101, 103, 107, 122, 204, 222, 268, 321n33; and subjectivity, 247–48; God's, 269, 301
- interiority (*bāṭin*), 28, 34–38, 66–67, 87–89, 99–100, 104, 114; in Christianity, 204, 214, 230; in German Idealism, 243, 247–48; in Durkheim, 279; in Habermas, 283. See also inwardness
- interpretation (*ta'wīl*), 159, 163, 297, 299–301
- invisible (*al-ghayb*), 70, 75, 82, 84–85, 88; and the visible, 1–5, 9, 13, 17, 28, 42, 64–66, 71–72, 90–91, 228. See also visible
- inwardness, 96–98, 105, 168–69, 195, 202, 247–48
- Iqbal, Muhammad, 165–70, 330n50
- Isidore of Seville, 205–206, 210–11
- Jewish law (*halakha*), 121, 221, 291
- Johansen, Baber, 120–23
- Judaism, 217, 291
- judiciary, 122–24, 279
- jurisdiction, 209, 220, 279
- jurisprudence (*fiqh*), 2, 4–5, 99, 314, 318n4; Christian, 204, 210; critique of, 78–80; emergence of, 46, 49; and ethics, 102–105; and government, 51–53, 55; and law, 111, 118, 325n1; and other sharia knowledges, 18–19, 28, 71, 84–85, 91–92, 97, 151, 158–59, 161, 290, 310; of Muslim minorities, 132–33; modern transformation of, 22, 124, 131, 134, 142–44, 263–66, 307–308, 321n16; of the revolution (*fiqh al-thawra*), 30; and shari'a goals (*maqāsid*), 188–90, 332n30; Shii, 45–46; and Sufism, 66–70, 72, 74–75, 83; and truth, 33–34, 137; and worship, 112–14, 116, 120, 123, 125, 127. See also *madhhab*; *ijtihād*; *uṣūl al-fiqh*
- al-Juwayni, 3, 5–6, 53–56, 160
- Kadi justice, 33, 245, 251, 258–59. See also Weber, Max
- kalām* (theology), 2, 3, 5, 23, 149–57, 318n3; contemporary, 144, 148, 164–71, 306–307, 309; contention over, 297–301, 303–306, 340n13; as foundational knowledge, 21, 152, 159, 169, 298; and jurisprudence, 80, 127, 158–60, 175; and philosophy, 21–22, 161–63; Sunni, 45–46. See also beliefs; bodies; creed
- Kant, Immanuel, 45, 65, 106, 118, 209, 217, 238–45, 273, 277, 281, 283, 291–92, 319n21
- Kelsen, Hans, 118, 120
- language, 13–14, 16–18, 76, 103–104, 144, 152, 266–67, 320n46; epistemic, 19, 21, 157, 287–88, 294; science of (*'ilm al-lughā*), 174–75, 185, 190, 292, 299, 304–305
- Laroui, Abdellah, 169, 265–67, 308
- Lateran Council, Fourth, 207–208
- law: customary, 271; genealogy of, 1, 6–7; modern, 7, 9–10, 12; princely, 10, 213; substantive, 111, 124, 258. See also canon law; civil law; code; divine law; eternal law; Jewish law; jurisprudence; natural law; positive law; private law; public law; *qānun*; revealed law; Roman law; sacred law; state law
- liberalism, 265, 271–74, 285, 289–90
- limits, 4, 79, 87, 272; definitions as, 85; of *ijtihād*, 184, 187; of knowledge, 34, 65, 301; of jurisprudence, 71, 78, 81, 310; of self, 80, 107, 205, 246, 314; of spiritual/temporal power, 212, 215, 227
- logic, 73, 84, 154, 156, 161–62, 302, 304–305, 310, 329n23
- Luther, Martin, 106, 217–18, 225–27
- madhhab* (juridical school, pl. *madhāhib*), 15, 46, 54, 131–32, 135, 137, 139, 261, 264. See also Hanafi school; Maliki school
- magic, 65, 85
- Mahmood, Saba, 20, 26, 95–99, 113, 321n22
- Maliki school, 131–32
- Marsilius of Padua, 215–16
- maqāsid*. See shari'a goals
- materiality, 5, 52, 70–71, 81, 140, 149, 166, 169, 211, 219, 248; of bodies, 41–42, 92, 240; of jurisprudence, 154; of law, 7, 9, 184, 200, 224, 231, 249–50; of power, 42, 52, 219, 250; of shari'a, 9, 11, 21, 106–107. See also immaterial

- al-Mawardi, Ali ibn Muhammad, 3, 29, 51–53, 56
 Messick, Brinkley, 150–51
 metaphysics, 152, 154, 160, 171, 296
 micro-acts, 2, 126
 modernity, 1, 12–13, 79, 123–24, 187, 196, 199, 220, 249, 257; in Arabic (*al-ḥadātha*), 267; narratives of, 43, 111, 195, 261, 283, 292
 modernization, 121, 197, 267, 273, 278, 287
 Montesquieu, Charles Louis de Secondat de, 233–34, 236
 morality, 195, 211, 217, 276, 319n18; and action, 38, 240–42; Hegelian, 245–49; Kantian, 7, 239–43, 277–78, 319n21, 336n18; and law, 106, 119, 218, 224–25, 236, 257, 282–84, 286
 Morocco, 75, 131, 321n17
 Morsi, Mohamed, 40, 326n16
 Moses, 68–69, 73, 154, 177, 212
 Mubarak, Hosni, 34–38, 40, 43, 63, 172, 322n48, 327n22
 Muhammad, Prophet, 30–31, 39, 58, 76–77, 82, 85–86, 91, 115, 141, 153, 158, 179, 182, 289, 296–98, 310; and revelation, 69, 177; succession to, 46–49, 56, 157. *See also* hadith; Sunna *mujtahid*. *See* scholar-*mujtahid*
 Muslim Brotherhood, 59, 75, 172, 255, 262
mu'āmalāt. *See* social interactions and transactions
 al-Mu'tazila, 56, 154–55, 163, 266, 329n16

 an-Na'im, Abdullahi, 288–90
 nation-state, 11–12, 14, 17, 58–59, 112, 123–27, 183, 199, 251, 272, 280–81, 287
 natural, the, 3, 154. *See also* supernatural
 natural law, 10, 43, 200, 213–14, 222, 224–25, 229, 231, 245, 263, 281
 nature, 19, 64–65, 95, 165, 167–68, 195, 197, 205, 260, 288, 297, 314, 330n50; human, 56, 261. *See also* state of nature
 norms, 10, 33–34, 79–80, 118, 216; jurisprudential, 21, 79; legal, 26, 122, 245, 260, 273–74, 280–83, 286–87; moral, 283, 286–87; shari'a, 286, 293

 Ottomans, 17, 58, 259, 318n2

 pastoral care, 203–205, 207–208, 218, 231, 236
 penance, 208–209, 223, 229
 philosophy, 2–3, 19, 21, 80, 290, 292, 294–96; Greek, 166, 261; and *kalām*, 148, 152, 159, 163; lawfulness of, 160, 162, 301; Western, 209, 285, 330n57
 Plato, 166, 195, 224
 politics (*siyāsa*), 2, 4, 9, 19, 55–56, 267; lawful (*shar'iyya*), 35, 50; modern, 42, 55, 58–59, 119, 219, 260, 289–90
 positive law, 17, 44, 140, 199–202, 214, 218, 222, 225, 227, 317n2
 practice: bodily, 81, 95–99, 151–52, 280; communicative, 281–82; definitions of, 149–50; ethical, 25, 27–28, 32–33, 42, 64, 100–102, 105, 117; judicial, 264, 279; material, 13, 151; spiritual, 64, 67, 74, 76–77, 81, 153. *See also* deeds
 prayer (*ṣalāt*), 2, 14, 17–18, 54, 67, 96, 98, 104, 122, 125, 130, 167–68, 178–81; and ethics, 113–17; and spirituality, 71–72, 74, 80–81, 87–90. *See also* imamate; worship
 present, the, 14–15, 21, 25, 128, 138–39, 143–44, 184, 196, 266–68, 315. *See also* real; real-present
 private law, 205, 279–80, 290
 private sphere, 106, 187, 209, 280, 289–91
 prophecy, 4, 46, 69, 94, 148–49, 153, 157, 224, 294–301, 303, 318n3. *See also* Muhammad, the Prophet
 public law, 111–12, 205, 228, 290
 public sphere, 43, 106, 187, 209, 244, 256, 262, 285–86, 291. *See also* reason, public

qānūn, 17, 259, 263, 318n2
 al-Qaradawi, Yusuf, 28, 64, 73, 75–77, 139–41, 322n44; and the Egyptian revolution, 30–31, 33–40, 42–44, 63, 72, 327n22; and Muslim minorities, 128–33, 143
qiyās: forms of, 161–3. *See also* analogical reasoning; syllogistic reasoning
 Qur'an, 99, 140, 175, 178, 180
 Qutb, Sayyid, 17, 142–43

 rationalism, 197, 256–57, 286
 rationality, 19, 55, 165, 199, 267, 285, 291, 307, 309, 311; instrumental, 197, 255, 310; Hegelian, 239, 244–46, 249; of the law, 256–58, 263–65, 268–69, 293; procedural, 10, 240, 270–74, 281–82; pure, 302–303; secular, 287; Weberian, 34, 121, 251, 292
 rationalization, 22, 121, 199, 246, 251, 276
 Rawls, John, 239, 243, 271–73, 284–85, 287–90, 340n55
 al-Razi, Fakhr al-Din, 3, 157, 161, 294, 298–300
 real, the, 21, 134–35, 139–44, 165–66, 169–70, 184, 186–87, 196, 245–46, 255, 262, 315, 328n35. *See also* present
 real-present, 142, 174, 269

- reality, 64, 142, 250, 278, 286, 308; in modern Islamic thought, 132–33, 138, 165–167, 169, 173, 187; orders of, 69, 72–73, 90, 92; representation of, 9–10, 17
- reason: civic, 289–90; demonstrative (*burhān*), 153, 156–58, 162–63, 268, 295–96, 302, 302, 304–305, 307–308; dialectical, 156, 158, 162; hermeneutical, 69; practical, 213, 336n18; procedural, 240, 242; public, 273, 285–87; pure, 6, 65, 71, 157, 189, 301–303; speculative, 160, 293–94; typology of, 309–11. See also *kalām*; *qiyās*; rationality; revelation
- reform (*iṣlāh*), 67, 139, 141–42. See also renewal
- Reformation, 273, 276, 285; Lutheran, 21, 106, 119, 218–19; Protestant, 225
- remembrance (*dhikr*), 71, 86, 93
- renewal (*tajdīd*), 139–41, 267–68, 306, 309, 330n57
- representation: constitutive of subject, 9, 65; in Kantian philosophy, 241–42; and Orientalism, 11; political, 215. See also reality
- Requerimiento*, 219–20
- revealed law, 16, 19, 26, 28, 31, 36, 38, 42–44, 317n2. See also divine law
- revelation, 1–5, 69–70, 80, 127, 139, 169, 182, 187, 191; authority of, 19, 165, 171, 188, 269; Islamic, 314; plurality of, 317n2; and reason, 22, 152–53, 158–60, 162–64, 292–301, 306–308, 330n38; 336n18. See also speech, revealed
- revivification (*ihyāʾ*), 16, 66, 139, 141
- revolution; in eighteenth century, 6, 41, 43–45, 198, 231, 247; in 2011, 15, 20, 28–29, 38, 173, 255, 326n16, 327n22;
- Rida, Rashid, 128, 134–35, 138–43, 261
- Roman law, 121, 202–203, 209, 211, 244, 251, 258–59, 280
- Rousseau, Jean-Jacques, 43, 45, 216, 231–33, 238–39, 243, 276, 281, 287
- sacred law, 121, 203, 212
- Said, Edward, 11
- Salafis, 76–77, 172, 255
- al-Sanhuri, Abd al-Razzaq, 121, 263–64
- Saudi Arabia, 39, 322n47
- Schacht, Joseph, 111, 120–21
- scholar-jurist (*faqīh*), 72, 74, 76, 83–84, 133, 162, 180, 183; and *madhhab*, 136–38; as muftis, 32, 34, 72; relationship to power of, 44, 49, 265
- scholar-*mujtahid*, 29, 40, 52–54, 79, 85, 137–38, 173–74, 305, 331n3; contemporary, 183–85, 268
- sciences (*ʿulūm*): classification of, 4–5, 298, 303; foundation of, 161–62, 296; human, 11, 187; shariʿa or religious, 66, 85–86, 103, 181, 298, 304; social, 138, 187, 198, 244–45, 251, 268
- secularism, 95, 125, 132, 273; French (*laïcité*), 275–76; Islamic arguments for, 58, 288–90
- secularization, 95, 275–76, 278
- self: care of, 20–21, 25–27; collective, 14, 22, 197–198, 251, 260, 265–266, 308 contained, 27, 117; serving, 20, 27, 117; technologies of, 25–27. See also *bāṭin*; exteriority; interiority; inwardness; limits; *ẓāhir*
- sense-perception (*ḥissīyyāt*), 153, 155, 157, 164, 166, 170
- senses, 92, 104, 149, 155, 164, 246, 305; and the unseen, 70–73, 318n5
- sermon (*khuṭba*), 37–38, 322n44
- Shādhiliyya, 18, 20, 66, 76–77, 324n8
- al-Shafiʿi, Muhammad ibn Idris, 134, 174, 177–78, 180–82, 184
- al-Shafiʿi, Sheikh Hasan, 173–74, 331n3
- shahāda* (bearing witness), 6, 17, 87, 121, 1170, 319n15
- shariʿa goals (*maqāṣid al-shariʿa*), 39, 186–89, 332n30
- al-Shatibi, Abu Ishaq, 184, 188–91, 268
- sincerity, 80, 87, 98, 101, 104, 107, 229, 232, 310. See also intent
- social interactions and transactions (*muʿāmalāt*), 27, 29, 59, 87, 90, 116, 122, 126, 129, 176, 264; and law, 112–14, 117–19, 131–33, 140–44, 151
- socialization, 276–77, 283, 286
- souls, 70, 155, 204, 215, 228–29, 308; care of, 8, 203, 208, 223, 225, 231; regulation of, 10–11, 200, 206, 227; salvation of, 21, 99, 211, 219, 224, 280
- sovereignty, 8, 13, 59, 98, 127, 228, 238; as authorship of laws, 42–44, 49; colonial, 219–20; over self, 26, 209
- space, 7–8, 12, 14–16, 41–42, 64–65, 76–77, 87, 102–103, 133, 152, 167, 208, 212, 227, 234, 239, 248, 269, 273, 286, 289. See also time-space
- speech, 122, 154, 156, 163, 204–205, 224; divine, 149, 162, 171, 180, 303, 318n3; revealed, 2, 4, 10, 17–19, 21, 45, 48, 50, 151–53, 159, 174–91, 256, 294, 296–301, 305, 307, 320n47, 340n15
- Spinoza, Baruch, 228–29, 232
- spirit (*rūh*), 5, 38, 68, 73, 83, 96, 318n7; national, 250–51

- spiritual exercises, 4, 5, 72, 93, 96. *See also* practice
- spirituality (*rabbānī, rūḥāniyyāt*), 2, 13, 92, 106, 168, 314, 318n4, 324n21; and ethics, 73–74, 76–77, 96, 309, 323n1; and jurisprudence, 83; and shari'a, 20, 64, 66–67, 99, 107
- state, 98–99, 112, 118, 182, 198, 233, 257, 280–82; Islamic forms of, 168–69, 172–73, 289; theories of, 226, 228, 243–44, 248–50, 276–77, 284. *See also* Church; education, state; nation-state; territory; sovereignty
- state law, 8–10, 12–13, 15, 20–21, 42, 59, 106–107, 119–20, 124, 127–28, 229, 238–39, 244–45, 251, 256, 263, 272, 274, 281–82, 288, 293
- state of nature, 231–32, 240, 243
- states (inner, *ahwāl*), 4, 5, 13, 42, 74–75, 86, 107; in Christianity, 208–209; ethical, 76; relation to the exterior, 20, 35, 63–64, 97, 99–105. *See also forum externum/internum*
- Suarez, Francisco, 224–25
- subject, 7, 9–10, 17, 26, 65, 90, 95, 97, 165, 196, 271, 287–88, 302; in German Idealism, 239, 241–43, 245–46, 277–79, 319n21; legal, 34, 127, 151, 284; sovereign, 44–45, 95
- subjectivity, 105, 181, 209, 243, 247–49
- Sufism, 47, 68, 73–74, 77, 155, 169, 317n2; as discipline, 18–19, 33, 66, 80–81, 153–54, 158, 175, 290; as knowledge, 2–5, 27–30, 64, 78, 91, 127, 151, 313, 318n11
- Sunna, 18–19, 31–32, 40, 94, 130–32, 140–41, 262, 265–66, 293, 295–96, 298, 301, 317n2, 331n3; and ethics, 99; as foundational, 31, 84, 136, 173–75; and the inner self, 103–104; relationship of with the Qur'an, 180–82; and Sufism, 66–67, 69, 76–77; and the unseen, 71–72
- Sunni-Shia relations, 45–51
- supernatural, the, 3, 154, 214, 225, 334n18. *See also* natural
- sylogistic reasoning (*qiyās*), 152, 156–57, 161–62, 329n33. *See also* analogical reasoning
- Tahrir Square (Cairo), 14–15, 18, 37, 41, 63, 126, 322n44
- Taylor, Charles, 21, 195–99, 217, 251
- temporality, 15, 55, 63, 117, 125, 139, 143, 153, 159, 167, 196, 260, 269
- territory, 7–8, 11, 42, 59, 120, 127
- textuality, 19, 48, 50, 69, 71, 80, 104, 123, 141, 189, 191, 268, 270; material, 4
- theology. *See kalām*
- time-space, 13–15, 17–18, 20, 27, 59, 63, 79, 88–90, 96, 116, 120, 125–27, 143, 169, 196, 250–51, 256, 265, 269
- totality, 8; canon law and, 217; Islamic knowledges as, 315; shari'a as, 1, 4, 20, 42, 126–27, 189, 279
- tradition, discursive, 96, 143, 148, 150
- translation, 12, 17, 27, 161, 286–87
- truth regime, 11, 219, 314
- truth-seeking, 28–30, 33–34, 37, 76, 94, 118, 173, 262, 265, 270
- universality, 6, 196, 238–39, 241–42, 246, 249–50, 271–74; and Arab consciousness, 267; of papal bulls, 220
- unseen world ('*alam al-ghayb*). *See* invisible
- unveiling (knowledge), 73, 93–92, 155, 178
- uṣūl al-fiqh* (sources of jurisprudence), 3, 21, 29, 31–32, 153, 173, 175, 293, 302–303, 331n3. *See also ijtihād*
- validity, 87–88, 122, 136, 189, 225, 240, 249, 273, 281–82, 295, 299
- violence, 15, 39, 53, 200–201, 215–16, 240, 316; legitimate, 119
- virtue, 52, 117, 127, 149, 213–14, 223, 225, 232, 240
- visible, 87, 166, 170, 232, 288, 302, 318n5. *See also* invisible
- visions (*ru'ā*), 4, 92
- Vitoria, Francisco de, 221–24
- walāya* (proximity to the divine), 47, 75
- Weber, Max, 22, 33–34, 106, 119–21, 245, 257–59, 292
- will, 20, 91, 184, 222, 224, 239, 281, 283, 295, 307; autonomous, 241–42, 278, 291; collective, 6–7, 10, 45; divine, 69, 104, 164, 228, 291, 336n18; free, 21, 45, 246–51, 293, 319n21; general, 45, 232, 238, 287; individual, 45, 99, 101–102, 118; people's, 44; ruler's, 49, 55, 213
- worship ('*ibādāt*) 27, 50, 66, 86, 106, 122, 140, 317n2; acts of, 2, 6, 10, 15, 20, 28–29, 48, 51–52, 67, 72, 74, 81, 83, 91, 97, 100, 104–105, 130–32, 176, 296, 299, 307, 315; and jurisprudence, 111–13, 117, 123, 125, 149; and law, 219, 325n1; in West, 119–20, 224, 228, 235, 276
- zāhir* (the outer), 2, 13, 25, 81–83, 87, 91, 95, 116, 163, 302, 306. *See also* exteriority
- Zarruq, Ahmad, 73–74

Founded in 1893,

UNIVERSITY OF CALIFORNIA PRESS
publishes bold, progressive books and journals
on topics in the arts, humanities, social sciences,
and natural sciences—with a focus on social
justice issues—that inspire thought and action
among readers worldwide.

The UC PRESS FOUNDATION
raises funds to uphold the press's vital role
as an independent, nonprofit publisher, and
receives philanthropic support from a wide
range of individuals and institutions—and from
committed readers like you. To learn more, visit
ucpress.edu/supportus.